



THE EXPULSION OF THE SOCIALISTS
FROM THE ASSEMBLY OF NEW YORK
STATE IN 1920

BY

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by

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PREFACE

In 1920, the Assembly of the State of New York suspended and then expelled from its membership five duly elected representatives because of their affiliation with the Socialist Party of America. These five men--August Claessens, Samuel A. DeWitt, Samuel Orr, Louis Waldman, and Charles Solomon--had been elected fairly, against difficult odds, had been convicted of no felony, and had each taken the oath of office prescribed by the state constitution for members of the General Assembly. On the opening day of the Assembly, they were suspended; three months elapsed before they were expelled, three months in which were held hearings to investigate their qualifications.

The thesis of this study has two points of emphasis: in the first place, it is intended to illustrate how such things as sharply conflicting attitudes on basic problems of political philosophy, popular hysteria, personal ambition, and the desire for power can all combine to create a situation in which basic principles of representative government can be violated by very dubious means; also, in spite of the significant questions in-

volved, such as the right of the populace to select its law-makers, the proceedings had only a limited immediate effect outside of the districts from which the five had been elected. I have concentrated on the case itself, in its setting, in an effort to determine what effects were desired and by what methods the principles sought to achieve them. The problem of why the effects were so limited is one that I do not feel that my research has qualified me to answer in more than the most tentative manner.

Little scholarly work has focused on this particular series of events. Robert K. Murray, in his monograph, Red Scare, discusses these proceedings in relation to the scare as a whole and suggests that this Albany affair was the immediate cause of the decline of the hysteria in 1920. I do not believe that this contradicts my thesis even though it may appear to do so, and I have discussed the matter in greater detail in my conclusion. Zechariah Chafee's account of the affair in Freedom of Speech is concerned primarily with proving the illegal nature of the proceedings. Other than these, the only secondary accounts which I have found have been very abbreviated discussions in connection with related topics.

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THE EXPULSION OF THE SOCIALISTS FROM
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CHAPTER I

SETTING

New York State in 1920 provided an ideal setting in which the hysteria that accompanied and followed World War I could reach its peak. Its conglomeration of peoples included adherents of almost every political ideology, particularly conservatives who felt their way of life endangered by their more liberal neighbors, Democrats as well as radicals. An assorted group of the politically unorthodox, principally in New York City, were preaching their dogmas on the street corners and in other places where they could get an audience; some were winning a few votes and even electing their candidates to public office. This complex situation was nothing new, but feeling was high in New York, as in the rest of the nation, and the talk of imminent revolution sounded alarming in the ears of many. As if the radicals were not enough, the Old Guard leaders of the heavily Republican legislature had reason to believe their leadership threatened because of a Democratic governor's program of reform legislation.

The political power of the state rested in the upstate counties away from the metropolis at the mouth of the Hudson. While New York's five boroughs sheltered slightly over fifty-four per cent of the state's population, its sixty-two delegates to the Assembly represented only forty-one per cent of the total number. The city claimed twenty-three of the fifty-one members of the state Senate, forty-six per cent of the total.¹ In the legislature of 1920, only two of the thirty-two chairmen of standing committees in the Assembly represented New York City, and the city contributed seventy per cent of the state's revenue but had only two representatives on the Ways and Means Committee.² In the Senate, the metropolis had two chairmanships out of twenty-six and four representatives among the sixteen members of the Finance Committee. The seven-member Rules Committee of the Assembly included two city-dwellers while in the Senate only one representative from the metropolis sat on that committee.³ One

1. Percentages are derived from figures given in The New York Red Book: Containing Latest Information Relating to the State Government (Albany: J. B. Lyon, 1920), pp. 211-214, 350-356, and in U.S., Bureau of the Census, Fourteenth Census of the United States: 1920. Population, III, 710-715.

2. New York Times, January 13, 1920, p. 2. Actually, three of the fifteen members were from New York City.

3. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 33, 35; New York, Legislature, Senate, Journal, 143d Sess., I, 47, 49.

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very practical reason for the limited power of the city's delegation to the state legislature was the large percentage of Democrats it included. Of the thirty-five Democrats in the Assembly of 1920, twenty-eight came from New York City. Upstate New York accounted for only two of the Senate's twenty-one Democrats.⁴

In those heavily Republican, upstate counties that controlled the legislature, beat the "conservative heart of the Grand Old Party."⁵ Thaddeus C. Sweet, Speaker of the Assembly and, in private life, a self-made man and manufacturer of paper boxes in a small city on Lake Erie, told a group of women " that the state should be protected from ill-considered legislation, even though it might have popular support, and that members of the Assembly should be spared the necessity of voting for measures they did not believe were wise or run the risk of losing the votes of women and of labor."⁶ The Republican leader of the Senate, J. Henry Walters, boasted that the legislature of 1920 economized and retrenched in every branch of the state government where that could be done without detrimental effect and had cut the proposed budget by one-third.⁷ In his report to the

4. The New York Red Book . . . , pp. 157, 211-214.

5. Arthur Mann, La Guardia: A Fighter Against His Times, 1882-1933 (Philadelphia: J. B. Lippincott, 1959), I, 127.

6. New York Times, March 21, 1919, p. 6.

7. The New York Red Book . . . , pp. 25-29.

legislature on revolutionary radicalism in the state, Senator Clayton R. Lusk of Cortland included the Communist Party of America, the Socialist Labor Party, the Communist Labor Party, and the Socialist Party of America in one category because, he alleged, none of them differed fundamentally in their objectives and but slightly in the means by which they hoped to reach those objectives.⁸

To men such as these, social welfare legislation seemed pernicious. A program favored by Governor Alfred E. Smith and the Democrats had given the conservative legislative leaders trouble in the preceding session. A health insurance bill, a bill establishing a minimum wage commission affecting women and minors, an eight-hour day bill for women and minors, a bill regulating hours for women doing office work and one providing sanitary safeguards for employees, all had passed in the Senate thanks to a coalition of Democrats and four insurgent Republicans. In the Assembly, the bills had died in the Rules Committee in spite of attempts by the Assembly Democrats to have them reported

8. New York, Legislature, Joint Committee Investigating Seditious Activities, Revolutionary Radicalism, Its History, Purpose, and Tactics with an Exposition of the Steps Being Taken and Required to Curb It, Being the Report of the Joint Legislative Committee Investigating Seditious Activities, Filed April 24, 1920, in the Senate of the State of New York, I, 7-8.

and by Senate Democrats to block adjournment until they were.⁹ The majority leaders feared a repetition in the session of 1920 of what had occurred in 1919. No one doubted that a series of bills, similar in content to those introduced and defeated in the former session, would be introduced again. The Democrats would support such measures fully as would some Republicans, and herein lay the problem. Republican leaders were anxious to avoid a split in their party delegation; yet they were determined not to yield to any pressure for "radical legislation."¹⁰

The majority of the inhabitants of certain sections of New York City provided in almost every way a sharp contrast with the upstate conservatives. Typical of these sections were the five Assembly districts from which came the suspended Socialists. The percentage of foreign born people in the population of the five areas varied from forty-three to sixty per cent and of the remaining--the native born Americans--the parents of eighty-two to ninety-two per cent had been born in other countries. More than ninety per cent of the foreign born residents of these districts came from eastern Europe, Russia being the largest contributor. Each election district covered only a few city blocks glutted with people. The smallest district in population was the

9. New York Times, April 20, 1919, p. 10; New York, Legislature, Assembly, Journal, 142d Sess., 1919, III, 2356.

10. New York Times, January 6, 1920, p. 2.

one in the Bronx with more than 83,000 residents, while Waldman's district in Manhattan had almost 110,000 people crowded into the small area.¹¹ Three official groups--the New York State Reconstruction Commission, a Joint Legislative Committee, and the Mayor's Committee on Rent Profiteering--following an investigation into the housing situation in the area in which was Waldman's election district, reported that a typical block housed almost 3,000 persons. The apartments were usually three-room, cold water flats, poorly lighted and ventilated and almost never conforming to even the minimum health and sanitation standards prescribed by the statute law of the state. The income of the majority of families in the area averaged sixty to seventy dollars per month, one fourth to one third of which was earned by the women and children sewing at home.¹²

In many of these same areas, socialism of some degree had been a way of life for the people who lived there since before a Socialist Party existed in this country. The old Socialist Labor Party had found the bulk of its support in these immigrant districts, and after the revolt from that party many of these same people had later joined the Socialist Party of America. During

11. U.S. Bureau of the Census, Fourteenth Census . . . , III, 710-715.

12. New York Times, August 10, 1919, section 2, p. 1.

the early part of the century, maintains one historian, "In some neighborhoods one grew up to be a Socialist, . . . just as naturally as in some other parts of the country one grew up to be a Republican."¹³

For these people and their counterparts in other areas to elect Socialist candidates to office was no novelty. The first Socialist Assemblyman in New York State came not from one of these districts but from the upstate city of Schenectady when, in November, 1911, the Socialists elected the mayor, eight of the thirteen Aldermen, and the Assemblyman.¹⁴ Not until 1915 was another Socialist elected to the Assembly, and this time he came from Brooklyn, from the district that later would elect Charles Solomon to the same office. One or several Socialists served in each Assembly from 1916 through 1922, all from the immigrant districts of New York City.¹⁵

With these immigrant districts constituting the areas of greatest support for the New York Socialist Party, it is not surprising that the impact of European radicalism should have been pronounced upon that organization. In the middle of the nineteenth century, the first Marxian socialists arrived in this

13. David A. Shannon, The Socialist Party of America (New York: Macmillan Co., 1955), p. 8.

14. New York Call, November 8, 1911, p. 1.

15. Ibid., 1912-1922, passim.

country from Germany. Their numbers remained small, and their few proselytes were immigrants like themselves. Then came a larger wave of German radicals around 1870-1890 including Bakunin anarchists as well as followers of the revolutionist, Ferdinand Lassalle. The latter group probably had the most influence in New York, for out of the conflict between this group and the earlier one emerged the Socialist Labor Party that came to be dominated by the dogmatic Marxist, Daniel DeLeon. Unwilling to compromise with ideas other than his own, DeLeon soon provoked a rebellion within his party, and shortly thereafter the dissenting faction merged with other more indigenous groups, among them the one led by Eugene Debs, to form the Socialist Party of America. Particularly in the east the Marxian influence remained strong. Party literature and speeches were generally couched in European socialist terminology, and the New Yorkers prided themselves on their knowledge of Marxist theory. Morris Hillquit, the Latvian immigrant who became one of the most significant figures in American socialism, proved to be as much an exegete as his former leader, DeLeon. Then came the Russian revolution followed by a period in which it had a pronounced influence upon the American radical movement as a whole.¹⁶

16. Theodore Draper, The Roots of American Communism (New York: Viking Press, 1957), pp. 11-184; Shannon, p. 8-13, 126-151; particularly helpful on the early period is the volume by Howard

Dissension, present within the Party since its beginning, became more noticeable after 1917 and culminated in August, 1919, in the rupture that produced the Communist and Communist Labor Parties. Party leaders traditionally had preferred to soothe within party councils the differences of opinion among the members and always to present a united front to the world.¹⁷ As long as the revolution seemed far in the future, a united front was possible. After the rapid succession of events in Russia in 1917, many of the more radical members came to believe the revolution to be imminent and others believed it could at least be hastened. Questions of policy and general ideological differences consequently became more significant. Relations between the factions within the party first became strained, then the breaches widened. The New York City radicals in February, 1919, following the lead of those in Boston and Chicago, organized the Left Wing Section within the Socialist Party and had their own press, officers, and dues system. The Section's members, small in numbers, acted as a unit at regular Socialist party meetings, making motions and voting only in accordance with instructions from its own steering committee. At these meetings, the smaller groups employed the details

H. Quint (The Forging of American Socialism: Origins of the Modern Movement [Columbia: University of South Carolina Press, 1953]).

17. New York Call, August 30, 1919, p. 8.

of parliamentary procedure--roll call vote, point of order, previous question--to confuse the issues under discussion and soon gained control of party headquarters and machinery in a number of districts.¹⁸ The state committee, meeting in April, promised to revoke the charter of any local that aligned itself with the Left Wing Section. In the ensuing months, the National Executive Committee expelled several groups within the national party including seven language federations¹⁹ and the Michigan state organization for having joined the Left Wing movement or in other ways expressing positions considered too radical. Some members, sympathetic to the Left Wing and not yet expelled, tried in vain to take over the party leadership during the summer of 1919. At the emergency national meeting in August, they finally surrendered, withdrew from the Socialist Party, and organized the Communist Party of America.²⁰

While disagreement was developing into a widening breach within the Socialist Party, various factors produced an external

18. Shannon, pp. 126-132; Draper, pp. 97-113, 142-147.

19. A language federation was a Socialist organization whose members spoke a language other than English. Because of the language barrier, it was not as closely tied to the Socialist Party as were the regular state and local organizations but was still considered a part of the party (Shannon, pp. 43-44).

20. Ibid., pp. 136-148.

threat upon the scene in the form of the Red Scare. The American people, when the Great War came to an end, seemed to turn their backs on the contemporary world with its economic, social, and political problems and sought to return to a state of normality that their nostalgia-clouded memories recalled as having existed in the pre-war days. Unemployment, inflation, conflicts between labor and management, and other problems all conspired to frustrate this popular desire. Further complicating the situation was the continuance of the wartime emotionalism so carefully cultivated by official Washington in 1917 and 1918 and prevented from running its course by the limited duration of the participation of the United States in the fracas. At first directed against those suspected of sympathizing with the enemy, the term "disloyal" came to be applied to all people thought to be opposed to traditional American values. The hysteria fed upon the contemporary problems and upon itself and rapidly increased throughout 1919 in the nation as a whole and in New York State in particular.²¹

21. The best over all work on the hysteria is the monograph by Robert K. Murray (Red Scare; a Study in National Hysteria, 1919-1920 [Minneapolis: University of Minnesota Press, 1955]), but George Soule's discussion of the economic problems that affected it can be helpful (Prosperity Decade; from War to Depression: 1917-1929, Vol. VIII of The Economic History of the United States [9 vols.; New York: Rinehart & Co., 1947], pp. 187-207). The work by H. C. Peterson and Gilbert C. Fite is good on the development of the hysteria (Opponents of War, 1917-1918 [Madison: University of Wisconsin Press, 1957]).

The Lusk Committee, created in 1919 in the State Senate, was to give the witchhunt in New York State its unique and notorious character. On March 20, J. Henry Walters, Republican majority leader, offered a resolution that a joint legislative committee be created to investigate the "scope, tendencies, and ramifications" of seditious activities in the state.²² Secret information that had come to him from official sources made the investigation necessary, he afterwards told newspaper reporters who interviewed him. In addition to information gathered by the Overman Subcommittee, which had just completed its hearings, Walters indicated that he had information from other sources ". . . more recent, more startling, and more immediately concerned with this state."²³

The path of the resolution was not completely clear. The thirty-five Senators present immediately and unanimously adopted the resolution even omitting such customary procedures as committee consideration. Backers of the resolution expected the members of the House to follow suit, for Speaker Thaddeus Sweet had

22. New York, Legislature, Senate, Journal, 142d Sess., 1919, I, 604. An excellent discussion of the Lusk Committee and its activities can be found in a volume by Lawrence H. Chamberlain (Loyalty and Legislative Action; a Survey of Activity by the New York State Legislature, 1919-1949 Ithaca, New York: Cornell University Press, 1951 pp. 9-52).

23. New York Times, March 21, 1919, p. 1.

committed himself to support of the measure.²⁴ The Republican members followed Sweet's lead. Not so the Democratic and Socialist members, many of whom considered the investigation unnecessary and felt that it would be ineffective. The New York Times reported "exhausting debate" in the House where the Socialists, especially August Claessens and Charles Solomon, raised loud voices for the opposition. Said the latter:

There are two Bolsheviks here in this house, Claessens and myself. If you want to stop the spread of what you have been pleased to call Bolshevism, study the causes of social discontent and you will find them in the high cost of living, unemployment, inadequate housing conditions, and the intensity of the struggle for existence generally. What have you done to meet these conditions? And yet you wonder that what you call Bolshevism is spreading through the state.²⁵

Finally the measure came to a vote, and from that point little time elapsed before the committee was organized. Charles D. Donohue, House Minority Leader, had been very active during the debate, and the Times attributed to his leadership the fact that only eight of the fifty-four Democrats voted against the measure.²⁶ The resolution was returned to the Senate and finally passed with only one change from the original presentation. That

24. Ibid.

25. Ibid., March 27, 1919, pp. 1, 8.

26. Ibid., p. 8.

change lowered the appropriation to finance the investigation from \$50,000 to \$30,000.²⁷ Shortly before the legislative session adjourned, the Republican Majority Leader, acting as Temporary President of the Senate, appointed Clayton R. Lusk and three other Senators to the committee. The Speaker of the House appointed five members of that body to serve. Among these was Louis M. Martin, Chairman of the House Judiciary Committee.²⁸ By virtue of their legislative offices, Thaddeus C. Sweet and J. Henry Walters were ex-officio members of the committee. New York State Attorney-General Charles D. Newton, Deputy Attorney-General Samuel A. Berger, New York lawyer Archibald E. Stevenson, and one other gentleman comprised the counsel for the committee.²⁹ Berger and Stevenson both later served as counsel for the Judiciary Committee in the hearing for the suspended Assemblymen, and Newton was generally credited with having drafted the suspension resolution.³⁰

27. New York, Legislature, Assembly, Journal, 142d Sess., 1919, II, 1120-1121; New York, Legislature, Senate, Journal, 142d Sess., 1919, I, 658, 677.

28. Ibid., II, 1688; New York, Legislature, Assembly, Journal, 142d Sess., 1919, III, 2794.

29. New York, Legislature, Joint Committee Investigating Seditious Activities, Revolutionary Radicalism . . . , I, iii.

30. New York Times, January 9, 1920, p. 4.

The Committee lost little time in entering upon its duties; across the summer and fall its activities gained in momentum and were always fully publicized. Almost immediately after organization the members of the committee began conferring and settled down to serious work in June.³¹ Their preliminary findings indicated to them constant violations of New York's criminal anarchy statute which forbade having anything to do with advocating violent or forceful overthrow of the government. Consequently, the Committee secured a series of search warrants and began to raid various centers of propaganda distribution. The Russian Soviet Bureau, the Rand School of Social Science, the Headquarters of the Left Wing of the Socialist Party, the New York City headquarters of the International Workers of the World, the headquarters of the Union of Russian Workers, seventy-one different headquarters of the Communist Party scattered throughout the various boroughs of New York, and headquarters of all of these organizations in Buffalo, Rochester and Utica, all were objects of the Lusk's raids. As a result of these forays, the Committee amassed tons of literature and secured seventy-seven indictments for criminal anarchy, eleven of which, at the time of the preparation of the Committee's report during the following

31. New York Times, May-June, 1919, passim.

winter, had resulted in convictions.³² During all this time the general public was not allowed to forget the present threat. The papers had fully covered the Lusk Committee's activities, supplementing their accounts of the activities in New York with accounts of the raids and arrests conducted by the federal government.

An apparent choice of yielding to a program of welfare legislation or coping with a very possible party split which would seriously endanger conservative control of the legislature faced the Old Guard Republican leaders during the summer and fall of 1919. At the same time the post-war hysteria and its consequence, the legislature's investigating committee, had forcefully reminded these conservative leaders of the growing strength of European-influenced radicalism in New York State. The upstate gentlemen had good reason to feel apprehensive as time for another election and legislative session approached.

32. New York, Legislature, Joint Committee Investigating Seditious Activities, Revolutionary Radicalism . . . , I, 20-26.

CHAPTER II

ELECTION AND INTERIM

A situation of much dramatic potential developed in New York State during the summer and fall of 1919 and the first few weeks of winter. Against the background of militant patriotism, the badly weakened conservative faction of the Socialist Party succeeded in reorganizing to defeat its own insurgents, and then managed to elect five candidates to the Assembly, three more than they had elected in 1918. The unusually large Republican delegation, elected at the same time the Socialists had been, assured Republican power in the legislature but failed to reassure legislative leaders of their ability to cope with the threat of welfare legislation. As attention turned from the election to the approaching legislative session, the Red Scare became more intense in the background.

Across the summer, the two factions of the Socialist Party--radical and conservative--battled to win the party nominations in the statewide primary. Actual expulsion of the more radical members would not occur until August, just before the

primary. In the meantime, the latter group had control of the party machinery in some election districts, and its members were registered on the official election rolls as Socialists. Even expulsion, when it came, did not remedy that. The first problem to be faced by the orthodox Socialists was the need to reorganize the Party in the areas where the Left Wing had appropriated the old headquarters: offices, records, furniture. To this end, they made appeals for funds with which to get re-established.¹ Former members of those locals which had been taken over by the Left Wing were told to send their membership cards to the county headquarters to be countersigned and enrolled as members at large until the various local branches of the Party could be reorganized.² Getting the candidates' names on the primary ballots constituted the second problem. To accomplish this, three per cent of the registered voters of a district had to sign a petition and present it to the Board of Elections.³ The Left Wingers, as registered Socialists, nominated candidates in the majority of the metropolitan districts and successfully petitioned to have these candidates' names appear on the ballots.⁴ Beginning on July 13,

1. The New York Call, July 4, 1919, p. 1.

2. Ibid., July 12, 1919, p. 7.

3. New York, Laws of the State of New York (1916), c. 537, sec. 48.

4. The New York Call, September 2, 1919, p. 1.

announcements appeared daily in the "Official Socialist News" column of The New York Call, strongly right wing newspaper of the Socialist Party, urging the party members to go to their district headquarters and sign the petition for the right wing candidates from their districts. A few days later, the paper began listing the official nominees from each borough and warned the readers against signing petitions bearing names other than those listed. The number of open air meetings announced in the official news column progressively increased as the candidates and party orators presented the Socialists' cause to the people within hearing of the various street corners. Editorials in the Call urged Socialists to vote for the official party candidates and had only condemnation for "disrupters" and "party wreckers." Many purported news articles were little more than editorials for the conservative Socialists, and over and over in the "Official Socialist News" column, the paper published detailed instructions about the mechanics of voting and for whom to vote. As primary day approached, the tone of the Call's appeal intensified. The editorials emphasized the duty of all registered Socialists to vote for the official candidates and insisted that those who realized the value of the Party's work would not fail to do so.

The other parties did not sit idly by as the primary approached. They marshaled their forces to provide for the general campaign and to take care of dissension in their own

ranks. In several districts and for different offices, the Republicans and Democrats fused; one would endorse the other's candidate for a particular office and refuse to run one of its own. Particularly, did this occur in areas of unusual radical strength and for the stated purpose of defeating the Socialists. In one area where the two old parties failed to fuse, the Times predicted victory in the general election for the Socialist Assembly candidate.⁵ Nothing in that newspaper indicated dissension within the Republican ranks, but the same cannot be said for Tammany Hall. In 1917, Charles F. Murphy, boss of Tammany Hall, had permitted William Randolph Hearst, a familiar figure in New York City politics at that time, to select the Democratic candidate for Mayor of New York in return for the newspaperman's support of the Democratic ticket.⁶ After two years the Tammany-Hearst alliance was becoming more and more difficult to maintain. Boss Murphy sought to appease Hearst by again allowing him to select certain Democratic candidates. Hearst would not be appeased. Murphy carried his overtures to the point of dropping from the Democratic slate Justice Joseph E. Newburger, a candidate for re-election to the State Supreme Court,

5. The New York Times, August 16, 1918, p. 18.

6. Mann, La Guardia . . . , I, 145.

and replacing him with a Hearst man. To secure this concession, Murphy had to permit the Executive Committee of Tammany to nominate several other men of whom Hearst disapproved. Dropping from a slate a judiciary candidate who had completed a successful term on the bench seems to have been contrary to custom. The result not only failed to please Hearst but resulted in a revolt within the Tammany organization that was to bear bitter fruit in the general election.⁷

Primary day, September 2, proved a day of excitement for the Socialists but of little interest to others. Surprisingly, the percentage of registered voters participating in the primary was small. Indeed, according to the Times, less interest was shown in this primary than in any similar event since the Direct Primary Law had gone into effect five years before.⁸ The voters of the old parties were evidently conserving their efforts for the November clash. Not so the Socialists. The actual strength of the Left Wing groups was small, and as election returns began to come in the regular party candidates took the lead and kept it. The first unofficial complete results revealed that the regular Socialists had generally been victorious, and the final,

7. New York Times, July and August, 1919, passim.

8. Ibid., September 3, 1919, p. 1.

official count confirmed this. Even where the Left Wingers had control of the party machinery, mailing lists, and clubrooms, the regular candidates had usually won.⁹ In only a few minor districts had the smaller group been victorious, and in those districts the names of their candidates went on the ballot as Socialists and received the endorsement of the State Executive Committee of the Socialist Party.¹⁰

With the Red Scare still in the background, the Socialists as well as the other candidates launched their campaign for the general election. In the 150 Assembly districts in the state, the Socialists were running 124 candidates.¹¹ They had no illusions of actually carrying more than a very small handful of the districts, but they considered an election campaign an excellent opportunity to put the Socialist program before the public.¹² During the first few weeks following the primary, interest apparently lulled. The Call said little about the election except to announce daily the open air rallies planned for that night, and the Times rarely mentioned the Socialists. The turmoil

9. The New York Call, September 3, 1919, p. 1; September 4, 1919, p. 1; September 12, 1919, p. 1.

10. Ibid., October 1, 1919, p. 1.

11. The New York Times, November 5, 1919, p. 1.

12. Morris Hillquit, Loose Leaves from a Busy Life (New York: Macmillan Co., 1934), p. 107.

aroused by Tammany's refusal to renominate Justice Newburger prevented the Democratic front from being as quiet as the others. Then, on October 5, the Socialist campaign officially opened with a large rally at which the members of the party ratified the candidates nominated by themselves in the primary.¹³

The rally was one of the favorite campaign devices of the Socialists. Actually, these rallies were not peculiar to election time; August Claessens recalled that the Socialists campaigned all twelve months of the year. Forums, classes, concerts, socials were held during the winter. The outdoor rallies began in April when, on mild nights after the dinner dishes were washed, all who could do so escaped from the tenements into the streets. Every few blocks boasted a speaker. Up and down the streets milled the crowds listening to the speakers whom they wanted to hear. Sometimes the listeners took a more active part when, following the speech, the orators of the evening would open the floor (or street) to questions, objections, criticisms.¹⁴ These discourses were not just political speeches. Frequently they were lectures on philosophy, economics, political science, literature, or art, and the speakers endeavored to make the subjects vivid and com-

13. The New York Call, October 3, 1919, p. 3; The New York Times, October 6, 1919, p. 12.

14. August Claessens, Didn't We Have Fun! Stories out of a Long, Fruitful, and Merry Life (New York: Rand School Press, 1953), pp. 88-89.

prehensible to their audiences.¹⁵ Toward the end of the evening, the various Socialist meetings in a district would tend to merge at one point. August Claessens recalled that during his campaigning days the crowds would follow him from one meeting to another, constantly growing, and the evenings would close with a great rally on the square at One Hundred and Tenth Street and Fifth Avenue.¹⁶ More vivid is Louis Waldman's description of the nightly climax to the evening meetings in his district:

Toward ten o'clock the smaller meetings would adjourn, and their audiences would drift toward the assembly at Second Avenue and Tenth Street. These final meetings, frequently several thousand strong, had a deep spiritual content almost like that of revival meetings. There the candidates would get together on one platform; there the tense emotions we had accumulated throughout the evening would be released in a final appeal to our constituents. And there, under the stars, we pleaded with thousands of men and women, black and white, Americans, Irish, Poles, Russians, Scandinavians, Jews, for comradeship, understanding, friendship, democracy.¹⁷

After the campaign officially opened, the number of rallies held increased daily.

The Socialists campaigned on such issues as rent, food and, in general, the high cost of living. Of the three, they seemed to place the most emphasis on the rent question. Post-war

15. Louis Waldman, Labor Lawyer (New York: E. P. Dutton, 1945), p. 83.

16. Claessens, p. 89.

17. Waldman, p. 83.

New York was undergoing a serious housing shortage, rents had sky-rocketed, and the tenements were dangerously over-crowded. Rent profiteering had reached such proportions that the Mayor had established a committee to investigate and make adjustments in cases brought before it by victimized tenants.¹⁸ A major campaign promise of the Socialist candidates for the Assembly was to bring before the state body, for the second time, a carefully constructed bill dealing with the housing problem, originally introduced by Solomon in the previous Assembly. Included in the bill were provisions for rent control, housing commissions and immediate construction of low rental developments.¹⁹

The Times paid little attention to any discussion of issues by the old party candidates and focused its news coverage upon Tammany's troubles. The Republican Party had endorsed the rejected Justice Newburger, and a large group of rebellious Democrats had also rallied to his cause. Other protests against Tammany were registered by the eighteen splinter parties that filed petitions placing sixty-five independent candidates on the ballots. Meanwhile, the war between the forces of Hearst and the

18. The New York Call, October 1919, passim; Waldman, p. 83; The New York Times, September 2, 1919, p. 14.

19. The New York Call, October 11, 1919, p. 1; New York, Legislature, Assembly, Journal, 142d Sess., 1919, I, 44-45.

Tammany braves waged. Governor Al Smith, a Tammany man and the object of numerous attacks by the newspaperman, challenged Hearst to a debate. Hearst declined with a few choice insults aimed at the governor and at Tammany.²⁰ Such was the situation as the election approached.

During this era, an honest poll was difficult to acquire, at least in some sections of New York City. The polling places, according to Louis Waldman, were usually untidy barber shops or funeral parlors. Toughs and gangsters hung around the places for the express purpose of intimidating voters. Voting inspectors and Republican and Democratic poll watchers overlooked such illegal activities for they frequently held their jobs under the patronage system, and if their candidates did not win they would join the ranks of the unemployed. The election machinery was inadequate, and the local officials had their districts so well organized that they knew who would probably vote, and who probably would not. In many cases strangers voted in the names of the sick, the dead, and the absentees. Counting the votes also offered opportunities to the unscrupulous. The counter could accidentally-on-purpose tear a ballot of the opposing party or, by concealing a piece of lead beneath his fingernail, mark it when

20. The New York Times, October 19, 1919, p. 1; October 28, 1919, p. 1.

he picked it up. In either case, it would be thrown out.²¹ Occasionally, the counting was delayed at some polling places until the trend at others was determined. Fights and riots were not uncommon occurrences.²² Even the New York Times carried reports of fraudulent voting in the primary of 1919. Its sources were the state District Attorney's office and the organization known as Honest Ballot Incorporated.²³

The state's election law provided one device apparently aimed at improving the situation but which seemingly had little effect. Any party with a candidate on the ballot could have present at each polling place not more than two "watchers" who must be qualified voters of the district in which they were watching. These watchers could be present within the guard-rail throughout the election and counting process. Also, the party could have one or more watchers or challengers, as these were called, outside the guard-rail of each polling place, and these also must be qualified electors of the district.²⁴ Poll-watching seems to have been dangerous business for members of an unpopu-

21. Waldman, pp. 79-80.

22. Claessens, pp. 102-103.

23. The New York Times, September and November, 1919, passim.

24. New York, Laws of the State of New York (1918), c. 323, sec. 352.

lar minority party. In their memoirs, both Claessens and Waldman tell of the beatings and threats of worse violence administered to Socialists who endeavored to fill the job.²⁵ After the election of 1919, the Call carried an article relating the acts of violence and the indignities to which the Socialist watchers and voters had been subjected at the polls.²⁶ Non-Socialists also testified to the dangers to unpopular voters and poll-watchers about that time. The campaign manager for a Tammany man struggling for power against Boss Murphy in 1921 reported that he was beaten and shot by polling officials and policemen on the scene when he detected some irregularities in the poll list in a certain precinct.²⁷ As election day approached, however, each issue of the Call appealed to the faithful to volunteer for the job of poll-watching.

Finally, the polls opened for election day of 1919. It was the fourth of November, and the day was cloudy and, for November, warm. Bookies favored the Tammany candidates over the Republicans by two to one.²⁸ By 2:00 p.m., an estimated seventy-

25. Claessens, pp. 102-104; Waldman, pp. 80-82.

26. The New York Call, November 5, 1919, p. 1.

27. M. R. Werner, Tammany Hall (Garden City, New York: Doubleday, Doran & Co., 1931), pp. 558.

28. The New York Times, November 4, 1919, pp. 1, 3.

five per cent of the voters had cast their ballots. The polls closed at 6:00 p.m., and the counting of the votes began. In contrast with the primary, the total vote was the heaviest ever cast in the city in an off year election.²⁹

The outcome of the election must have been a surprise to almost everyone. As soon as the first count came in, the Times began flashing the results on the big screen in front of the Times Building, visible from all parts of Times Square.³⁰ The people down below might have rubbed their eyes in amazement as they watched; the Republicans had the lead in an unprecedented number of districts from the beginning. And they kept it. The first complete, unofficial returns revealed that Republicans had been elected to the four principal offices being filled in this election as well as to fifteen Assembly seats in addition to those held the previous year. The same returns gave three Assembly seats to the Socialists.³¹ Later returns gave the Socialists two additional Assembly seats to bring their number up to five. Two of the Socialists, Louis Waldman and August Claessens, had won against the united efforts of the two old parties, and the other three had emerged victorious in battles waged between several

29. Ibid., November 5, 1919, p. 4.

30. Ibid., November 4, 1919, p. 3.

31. Ibid., November 5, 1919, p. 1; November 6, 1919, p. 3.

parties. In a number of other districts, the vote was very close but the Socialists had lost.³² The Republican sweep in the metropolis increased their numbers in the legislature for 1920 and gave them more than the two-thirds majority necessary to override a gubernatorial veto. Even the governor would have difficulty opposing the heavily Republican Assembly.³³

The five Socialists just elected--Louis Waldman, Samuel Orr, Samuel A. DeWitt, August Claessens, and Charles Solomon--were not unlike many other young men in the districts from which they came. Waldman, Orr, and Claessens were immigrants themselves. The five had become Socialists from six to ten years previously. All had acquired educations only with great difficulty, and Waldman, Solomon, and Claessens had worked full time while studying at night. By 1920, DeWitt had become a dealer in machinery. Waldman and Orr, both in some stage of preparation for the legal profession, were the only bachelors, and Solomon, also a law student, was supporting a wife and three little girls. Claessens made his living as a speaker and writer for the Socialist Party and the Rand School of Social Science.³⁴

32. The New York Red Book, pp. 539, 543-544.

33. The New York Times, November 6, 1919, p. 3.

34. Waldman, passim.; New York, Legislature, Assembly, Committee on the Judiciary, Proceedings of the Judiciary Committee of the Assembly in the Matter of the Investigations by the

In that interim period between the election and the convening of the Assembly, it might have seemed to conservative New Yorkers as though their area were the center of the nation's radical activities and becoming the center of its radical population. The Lusk's continued to make their raids on centers of radical activity until the latter part of December when they ceased their investigations and began to organize the fruits of their research into a multi-volume report to submit to the legislature.³⁵ Nor did the raids and arrests made by the federal government show any signs of abating. Many radicals arrested by federal authorities in other parts of the country were transported to Ellis Island in the New York harbor to await hearings and, possibly, sentences or deportation. Some of these were released under bond or on parole in the metropolis.³⁶ Just before Christmas from various points in the country, two special trains brought radicals to Ellis Island where the old army transport

Assembly of the State of New York as to the Qualifications of Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon, to Retain their Seats in Said Body, Legislative Document no. 35, 1920, I, 159-162 and II, 1695-1696, 1873-1874, 1955-1957; The New York Times, December 10, 1954, p. 27; letter from Hon. Charles Solomon, May 21, 1960; letter from Hon. Samuel Orr, April 20, 1920; letter from Samuel A. DeWitt, April, 1960.

35. New York, Legislature, Joint Legislative Committee Investigating Seditious Activities, Revolutionary Radicalism . . . , I, 3.

36. The New York Times, November 23, 1919, p. 1.

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Buford--the Soviet Ark--was being prepared to carry 249 of these aliens to Russia. Exactly when the ship was to sail the press could not discover, and the suspense, reflected in the Times's front page articles, mounted.³⁷

Finally the day came for the Buford to sail, but it brought no abatement of the prevailing hysteria. At dawn on a Sunday morning, the leaden-colored transport slipped quietly out of New York harbor passengered with what Federal Bureau of Investigation Chief William J. Flynn called "the brains of the ultra-radical movement."³⁸ In a New Year's Eve message to the nation, United States Attorney General A. Mitchell Palmer pledged the Department of Justice to unflinching and aggressive warfare against all forms of radicalism seeking to overthrow the government.³⁹ He followed this with simultaneous nationwide raids against members of the Communist and Communist Labor Parties in January. Four thousand warrants were issued, and the press reported 2,635 held on evidence which arresting officials considered sufficient for deportation. Standing by for possible use to deport the arrested were three transports. Periodically reports came from the Buford, and newspaper readers

37. Ibid., December 1919, passim.

38. Ibid., December 22, 1919, p. 1.

39. Ibid., January 1, 1920, p. 17.

followed the progress of the Ark as it crossed to a Finnish port near Russia. The Radicals that remained in this country and their real or supposed activities filled numerous articles, both feature and news.⁴⁰ Prominent men took the radical threat as the subject of any number of speeches. On December 27, Senator Lusk, in a talk given before the Women's Equal Opportunity League meeting at New York's Hotel Commodore, warned the women against following labor leaders who aimed at overthrow of the government.⁴¹

While the newspapers were so preoccupied with the radicals and their pursuers, a small group of Old Guard legislative leaders met quietly in a series of little publicized meetings extending over a period of about three weeks. Among them were Speaker Sweet, Senate Majority Leader Walters, and Assembly Majority Leader Simon L. Adler. The Republican State Chairman, George A. Glynn, presided over the legislators' meeting. The purpose of the gathering was to formulate a legislative program with which to counter the Democrat's program of welfare legislation. Two days before the Assembly was to convene, the Old Guard admitted failure.⁴² They had nothing to offer the more liberal Republicans in place of the Democrats' program.

40. Ibid., January, 1920, passim.

41. Ibid., December 28, 1919, p. 20; December, 1919, and January, 1920, passim.

42. Ibid., December 28, 1919, p. 20; January 6, 1920, p. 2.

Thus the time approached for the Albany surprise. The situation was ripe. The Old Guard had the legislative power of the state firmly in their hands provided that some of their own number did not desert to the side of the Democrats, and on the question of the hated welfare legislation that was a distinct possibility. The same group felt their traditions and institutions threatened from another angle, the radicalism so rife particularly among some of the immigrant groups. And nationalistic fervor was at such a high point that much could be done in the name of patriotism before public sentiment would be offended.

CHAPTER III

ACTION BEGINS

The New York State Assembly convened for its annual session on January 7, 1920, in the capitol building in Albany. Hundreds of spectators and guests filled the galleries and even crowded the Assemblymen on the floor itself.¹ Among the men in the chamber certified by the Secretary of State as having been elected to the Assembly from the several districts were the five Socialists from the New York City area: Samuel A. DeWitt and Samuel Orr from the Bronx, Charles Solomon from Brooklyn, and Louis Waldman and August Claessens from Manhattan.

This session began in the traditional manner. At noon, the clerk of the previous Assembly called the members to order. A minister opened the proceedings with prayer. The clerk called the roll as presented by the Secretary of State, and the House proceeded with the business of electing a speaker. As each member's name was called, he arose at his desk and named his choice for the office. DeWitt, Orr, Solomon and Waldman nominated

1. New York Times, January 8, 1920, p. 1.

August Claessens. Thirty-three Democrats named their leader, Charles D. Donohue from Manhattan. But there was no question about the outcome on this vote because the 109 Republican members re-elected Thaddeus C. Sweet for the seventh time, and the clerk declared Sweet the duly elected Speaker of the Assembly of 1920.

The events of the next few minutes might have given a perceptive onlooker some slight indication of what would follow. Two members of the House conducted Speaker Sweet to the Chair. He turned and addressed the assemblage. He thanked the members for electing him and spoke of the responsibility of the Speaker's position. Then he launched into a discourse that began with a reminder of the nation's constitutional heritage and of the dangers to it posed by the Bolsheviki and proceeded to an advocacy of retrenchment in expenditures and taxes and a warning against paternalistic legislation.² When he had concluded his speech of acceptance, Sweet stepped down from the chair, appointed Louis M. Martin temporary presiding officer, and then left the room.³

2. New York, Legislative, Assembly, Journal, 143d Sess., I, 1-11.

3. Louis Waldman, Albany: the Crisis in Government; the History of the Suspension, Trial and Expulsion from the New York State Legislature in 1920 of the Five Socialist Assemblymen by their Political Opponents (New York: Boni & Liveright, 1920), pp. 2-3.

Following the Speaker's address, affairs once more proceeded in time-honored fashion. The Assembly members elected a clerk, a sergeant-at-arms, a principal doorkeeper, and other officers for the new session. The Republican floor leader, Simon L. Adler of upstate New York, offered a resolution that a committee be appointed to inform the governor that the House was organized and ready to begin. This was done. Similar procedure was followed in notifying the Senate. A clergyman was invited to open the daily legislative sessions with prayer, and the clerk was instructed to arrange seats for the press and to make the usual contracts with the Post Office. Among other customary business attended to a committee was appointed to draw seats.⁴ During this period of about two and one-half hours, a generally amiable atmosphere pervaded the chamber with some Assemblymen going out of their way to greet the Socialist members.⁵

Then occurred the beginning of the proceedings that would distinguish this session of the Assembly from any other before or since. The Speaker went immediately to his Chair upon returning to the room and asked the Sergeant-at-Arms to conduct Messrs. Claessens, DeWitt, Orr, Solomon, and Waldman to the bar of the

4. New York, Legislature, Assembly, Journal, 143d Sess., 1920, 11-20.

5. Waldman, Albany . . . , pp. 2-3.

House. When they had appeared, Sweet embarked on a denunciation of the Socialist Party and the platform on which the five had been elected. He declared the platform to be "absolutely inimical to the best interests of the State of New York and of the United States." He quoted a passage from the Party's constitution charging its members to adhere to its platform and constitution in all political activities; he noted the large number of immigrants in its ranks, cited its stand opposing the United State's participation in World War I, and quoted from a resolution adopted by the Party expressing its support of the Communist movement in Russia. Indeed, charged Speaker Sweet, "It [the Socialist Party] is not truly a political party, but is a membership organization admitting within its ranks aliens, enemy aliens, and minors."⁶

Simon Adler took the floor, when the Speaker had finished, and proposed a resolution suspending the five Socialists from their seats in the Assembly until their qualifications and eligibility had been investigated. The resolution gave nine reasons for the suspension: (1) the five were members of the Socialist Party of America, (2) that party had officially declared its "adherence and solidarity" with revolutionary Russia and had pledged itself to

6. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 20-22.

promote the international Socialist revolution, (3) the party had endorsed the principles of the Communist International, (4) its members had agreed to follow the party constitution and platform in all political actions, (5) a member elected to public office could be expelled from the party for failing to follow the constitution and platform, (6) the controlling faction of the party could be composed of aliens, (7) the party had officially resolved that the class struggle was the only struggle in which the workers were justified in going to war, (8) this party had generally opposed the World War, (9) these five men had been elected on the platform of this same party and subscribed to its principles.⁷

A few minutes sufficed to complete the first episode of the drama. The Sergeant-at-Arms escorted the five men back to their seats while the Speaker called for a roll call vote on the resolution. Caught by surprise and voting apparently with little forethought, the Assemblymen endorsed the ~~amendment~~ ^{resolution} by a vote of 140 to six. Two Democrats from the Bronx and four of the Socialists cast the dissenting votes. The fifth Socialist, Waldman, abstained when Speaker Sweet refused to allow him to explain his vote. By abstaining on a roll call vote, an act against the rules of the House, he sought to have himself declared in contempt of

7. Ibid., pp. 22-24.

the Assembly and thus permitted a chance to speak in the Socialists' defense. The Speaker ignored the rule, and Waldman was not permitted to speak. Sweet directed the Sergeant-at-Arms to escort the men from the floor of the Assembly, and, as the man complied with the Speaker's order, approximately a dozen people applauded. The Assembly proceeded with its business.⁸

Reaction to the suspension was strong in many quarters, and the charges made against the Socialists by the legislative leaders remained as vague as they were in their first statement. Overnight, many Democrats reversed their position, and party leaders announced their opposition to the ouster proceedings. GOP leaders were able to avert an open break in their party, although many Republicans shared the feelings of the Democratic chiefs. Leadership in the proceedings rested upon Speaker Sweet whose motives could have been somewhat mixed. Expressing all the while uncertainty as to the exact nature of the charges made against them, the Socialists resolutely rose to their own defense and, as they put it, to the defense of the constitution. Amidst all the charges and countercharges, opinions and protestations the two sides made their preparations to meet in Albany.

8. Ibid., pp. 24-25; New York Call, January 11, 1920, p. 1; New York Times, January 8, 1920, p. 1.

From the beginning, Speaker Sweet engineered the affair. He admitted, a few days after the suspension, that he had been considering the possibility of such action since the early part of December and had discussed the matter with others who had assured him that he was correct.⁹ With whom Sweet discussed the prospect of the proceedings is unknown. Only a very few Assemblymen knew of the plan in advance, but among those few who knew and who must have approved at the time were House Majority Leader Adler and Chairman Martin of the Judiciary Committee.¹⁰

On at least two occasions, the Speaker attempted to explain his reasons for having instigated the proceedings. In a letter dated February 5, 1920, he stated his objectives as follows:

My sole and only purpose in this entire proceeding has been to ascertain whether the Socialist members of the Assembly of 1920 have by their votes and speeches endeavored to hamper and impede the activities of the State of New York in participating with the other states of the American Union in an endeavor to bring the war to a successful conclusion.¹¹

He continued by noting that "as a citizen and a man" he was interested in ascertaining whether or not the five belonged to a party which was controlled by a small group composed in indeterminate

9. Ibid., January 11, 1920, p. 21.

10. Ibid., February 8, 1920, p. 16.

11. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 884.

part of minors and aliens and if the five had promised to resign their positions if their actions failed to meet the requirements of this small group.¹² In a speech made on May 7, he again referred to the Socialists' anti-war attitude in the Assembly as having disturbed him. He mentioned also the "insidious attacks being made upon our peaceful and contented laboring class" and the "poisonous documents and revolutionary propaganda . . . being circulated among our citizens."¹³

In addition to his concern over the Socialists' disloyalty and the threat that they offered to the peace and well-being of the population, two other less altruistic possibilities should be considered in a discussion of Sweet's motivations. Republican George F. Thompson, a state Senator from Niagara County, attributed the affair to Sweet's personal ambition not only to be the GOP's gubernatorial candidate in 1920 but to have the power to select the entire Republican ticket for the state elections.¹⁴ That Sweet had gubernatorial aspirations had been suggested in an editorial in the New York Times as early as October, 1919.¹⁵ Also, he had before him the example of Calvin Coolidge who had, during

12. Ibid., pp. 882-885.

13. New York Times, February 8, 1920, p. 16.

14. Ibid., February 7, 1920, p. 3.

15. Ibid., October 30, 1919, p. 12.

that same fall, been reelected governor of Massachusetts by an overwhelming majority on the police strike issue. The second possibility is the threat offered by the proposed welfare legislation. Perhaps it is only coincidental that at the same time that Sweet was formulating and discussing with several Republican colleagues the possibility of the ouster, the party leaders were seeking an alternative to the Democrat's legislative program. There is insufficient evidence to prove that either Sweet's gubernatorial aspirations or the Democrat's program had any direct motivating influence upon him, but in the absence of evidence to the contrary, they are worthy of consideration.

There was no hesitation in the reaction of the Socialists to the suspension. When the five boarded the train in Albany that Wednesday night, they had not decided what form their fight would take--whether to appear before the Judiciary Committee or whether to seek redress through the courts--but they made no mention of the possibility of accepting the situation. Their train arrived at Grand Central Station about 9:00 p.m. Representatives of the press as well as local Socialists met the train and conducted the suspended Assemblymen to the party headquarters where the latter discussed the day's events with members of the city, county, and state Executive Committees. The group appointed a Committee of Eight to formulate a plan of action. Five of these eight were to play rather prominent parts in the hearings later on: Morris

Hillquit, William Karlin, and S. John Block would appear as counsel for the Socialists while Algernon Lee and Julius Gerber would testify at length. The Committee remained in session until a late hour. In the meantime, the five ousted Assemblymen issued a statement to the press condemning the Assembly's action as being a blow at representative government and stating their belief in the Socialist program and their determination to stand by it. On Thursday morning, the Call carried in black borders above its masthead the following statement: "DIED at Albany, January 7, 1920, REPRESENTATIVE GOVERNMENT".¹⁶ In an editorial on that same day, the paper maintained that the Legislature, by its action of the previous day, had allied itself with the violent revolutionists or "those who insist that a minority has no chance by peaceable political methods in securing industrial justice."¹⁷ From his home at Saranac Lake, Hillquit issued a statement emphasizing that the Socialist Party advocated radical changes by "lawful and constitutional methods" and calling the Assembly's action a "shameless attack upon the very foundations of democracy and representative Government."¹⁸ The Socialist ex-Congressman, Meyer

16. Ibid., January 8, 1920, p. 1; New York Call, January 8, 1920, p. 1.

17. Ibid., January 8, 1920, p. 8.

18. New York Times, January 9, 1920, p. 4.

London, expressed similar sentiments,¹⁹ while other party members remarked upon the invaluable publicity that the proceedings would bring the Socialists.²⁰

The leaders of the GOP reacted with no such single-mindedness as the Socialists manifested. Some were openly and sharply critical of the action; others approved or adopted a wait and see attitude. Attorney-General Newton was critical of the critics and expressed his opinion that the charges would be upheld but that people should withhold judgment until the hearings had been completed.²¹ Perhaps more vocal than those who favored the ouster were those who opposed it. Among these latter were F. H. La Guardia, president of the New York City Board of Aldermen and later mayor,²² and a metropolitan Assemblyman who protested that the only reason that he had voted for the measure was because it came to a vote so quickly that he did not have time to consider it.²³ Among the more active Republicans in opposing the action was Charles Evans Hughes, former GOP presidential candidate. He

19. Ibid., January 12, 1920, p. 3.

20. Ibid., January 9, 1920, p. 3.

21. Ibid., p. 4.

22. Ibid., p. 1.

23. Ibid., January 10, 1920, p. 1.

wrote the Speaker an open letter in which he declared as follows:

. . . it is absolutely opposed to the fundamental principles of our Government for a majority to undertake to deny representation to a minority through its representatives elected by ballots lawfully cast Nothing in my judgment, is a more serious mistake at this critical time than to deprive Socialists or radicals of their opportunities for peaceful discussion and thus to convince them that the Reds are right and that violence and revolution are the only available means at their command.

If the men were guilty of revolutionary activities, he believed that the evidence should be placed before the proper authorities and the matter not handled in this way.²⁴ Sweet replied, also in an open letter, that Hughes had not read the resolution very carefully, that the Party was being investigated rather than the men, and that the Judiciary Committee of the Assembly was the proper authority before which the evidence should be placed. He implied that the former Governor was criticizing without full knowledge of the facts and that he was thereby giving aid and comfort to the radicals. After this, according to the Times, the majority of the upstate leaders sided with the Speaker; the metropolitan Republicans were generally disturbed and feared harmful reactions from the voters in the fall elections.²⁵

At one point, an open break threatened in the state Re-

24. Ibid., pp. 1, 3.

25. Ibid., January 11, 1920, pp. 1, 21.

publican Party, but this was successfully averted. The State Committee had scheduled a meeting in New York City for January 10. The more conservative of the party's leaders hoped the subject of the suspension would not be raised and feared an open split if it should be. Chairman George H. Glynn maintained that the ouster had received support from both Democrats and Republicans; hence it was not a party matter, and it should not be discussed. Republican Ogden L. Mills, New York County Chairman and later Congressman, declared that he was going to express his opinion on the matter at that meeting. Knowing Mills's opinion to be adverse to the suspension, Speaker Sweet, Senator Lusk, Senate majority leader Walters, and several others met together just prior to the meeting to discuss a course of action. Mills arrived with his speech prepared and ready to deliver. Before the meeting began, he voiced his opinions freely; Republican leaders sought to pacify him but to no avail. About the time the meeting began, Senator Walters requested Mills to join him in another room and engaged him in a conversation. In the meantime, Chairman Glynn rushed through with the routine business and quickly adjourned the meeting before Mills could break away from the Senator. Mills immediately delivered his comments to the press, but the issue had been averted in the meeting, and an open break in the party had

been avoided.²⁶

Outside of the New York Republican Party, the ouster attracted more censure than praise. Governor Smith met with the state Democratic Party leaders, during the morning that followed the event, to consider the matter and decided to issue a statement declaring his disapproval. In the statement, he suggested that the Republicans had started the entire business as a smoke screen to conceal their efforts to frustrate the Democrat's legislative program. Later in the day, he discussed the matter with the Democratic legislative leaders who rallied to his position.²⁷ The press seemed to be divided in its attitude. The New York Times, sometime advocate of progressive legislation and usually a harsh critic of the Republican legislature, expressed strong approval of the suspension.²⁸ According to a rundown that paper carried on the attitudes of other metropolitan papers, the Sun and the Tribune took the part of the upstate Republicans, while the Herald and the World opposed the action.²⁹ Such men as Senators Harding (Ohio),

26. Ibid., January 10, 1920, p. 1; January 11, 1920, p. 1.

27. Alfred Emanuel Smith, Up to Now; an Autobiography (New York: Viking Press, 1929), pp. 199, 201-202.

28. New York Times, January 8, 1920, p. 16; January 9, 1920, p. 16.

29. Ibid., January 9, 1920, p. 5.

Borah (Idaho)³⁰ and Johnson (California)³¹ objected to the suspension. Said the soon-to-be president of the country, "We should dangerously abridge American liberties to deny a place in any state assembly or in Congress to any man eligible to the office and honestly elected thereto."³² Senator Miles Poindexter (Washington), one-time progressive, represented the other point of view when he wrote to Sweet commending him for his actions.³³

Many organizations, including such diverse ones as the Central Federated Labor Union of Greater New York and the National Security League,³⁴ passed resolutions expressing their disapproval of the suspension, but most noteworthy of them all, perhaps, was the Bar Association of the city of New York. At the Association's meeting on January 13, almost a week after the Socialists had left Albany, Charles Evans Hughes presented a resolution, already signed by thirty-five members, that expressed opposition to the suspension and called for the president of the association to appoint a special committee to appear before the Assembly or the Judiciary Committee and take whatever action seemed most desirable "to

30. Ibid., January 11, 1920, p. 21.

31. Ibid., January 14, 1920, p. 6.

32. Ibid., January 9, 1920, p. 4.

33. Ibid., January 15, 1920, p. 2.

34. Ibid., January 10, 1920, p. 2; January 14, 1920, p. 2.

safeguard and protect the principles of representative government which are involved in the proceedings now pending."³⁵ Three hours of spirited and even bitter debate occurred before the resolution, slightly amended, finally passed. Named to the special committee were Hughes and Ogden L. Mills, among others. Both the members of the committee and the Socialists emphasized that the Bar Association group was appearing in the public interest rather than representing the radicals at the hearings.³⁶

On the Assembly floor, the Democrats led the opposition to the suspension. The legislature did not meet again, following its adjournment that Wednesday, January 7, until Monday morning, January 12. At that time, Assemblyman Steinberg, Republican from Manhattan, had prepared a resolution providing for reinstatement of the Socialists until the hearings would have been completed, but, when the House was ready for new business, Speaker Sweet refused to recognize him. He recognized Democratic floor leader Charles D. Donohue, instead.³⁷ The latter, after protesting that he did not approve of the doctrines or propaganda of the Socialists, made the following remarks:

35. Ibid., January 13, 1920, p. 1.

36. Ibid., January 13-15, 1920, passim.

37. Ibid., January 13, 1920, pp. 1-2; New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 29-35.

An impression has gone out, about the state and about the nation, that these men whom we have indicted have been condemned before they were given a hearing with all that that involves. In the interest of justice and in the interest of representative government and of American institutions, I think that the manly thing for us to do, if we have acted hastily, is to confess our error and do what we can to make up for it.³⁸

Then, he offered a resolution that the Socialists be seated until the Assembly voted to expel them. Speaker Sweet ruled that this resolution was an amendment to the original one and, for that reason, was not in order unless the Assembly voted to reconsider the first. This the House refused to do by a vote of seventy-one to thirty-three. Eleven Republicans from New York City voted with Donohue, and only three Democrats voted against him. Two of these latter were from upstate New York, and the third was Louis A. Cuvillier from Manhattan, a member of the Judiciary Committee. Forty Assemblymen failed to vote. That group included eight New York City Democrats, two upstate Democrats, four New York City Republicans and twenty-six upstate Republicans.³⁹ Perhaps some of these preferred not to vote on the issue, but other factors—e.g., the fact that it was a Monday morning—might just as well have been the cause for their failure to vote.

38. New York Times, January 13, 1920, pp. 1-2.

39. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 35-36.

Reflections of discontent continued to be heard in the Assembly, even while the body passed resolutions incident to the hearings. Earlier, the Times had reported the objections of some Republicans to the secrecy in which the suspension plans had been concocted.⁴⁰ As soon as action on Donohue's motions had been completed, Steinberg succeeded in being recognized and offered a resolution directing the Judiciary Committee to investigate and report on whether any members of the Assembly other than the Speaker and the majority leader were consulted about the suspension resolution. A ninety to seven vote killed that immediately, and the House proceeded with other business.⁴¹ Because of the sharp criticism among his constituents, another metropolitan Republican gained the floor and sought to explain his vote on the original suspension resolution. The Speaker ruled that the lawmaker was exceeding his rights when he gained the floor for that purpose, and the man sat down.⁴² Theodore Roosevelt, Jr. made his maiden speech in the Assembly in support of his resolution to have daily copies of the hearings printed and distributed to the Assemblymen. The resolution was passed unanimously. Then the

40. New York Times, January 10, 1920, p. 1.

41. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 36-37.

42. New York Times, January 13, 1920, p. 2.

House agreed to Donohue's resolution that the hearings be opened to the public. On Tuesday, January 13, the day following Donohue's resolutions, Bronx Democrat Joseph V. McKee moved to amend the House rule which provided for the size of the standing committees. By this action, he endeavored to make it possible for the Assembly, by resolution, to expand the Judiciary Committee from thirteen members to include the entire 150 Assemblymen. The amendment was defeated by a vote of eighty to sixteen; fifteen New York City Democrats and Mr. Steinberg constituted the latter group. The Times considered this vote as evidence of Sweet's power in the Assembly.⁴³

A Tammany Democrat introduced another situation potentially dangerous for the Republican Party's unity. On Tuesday, January 13, Martin S. McCue of Manhattan, in a speech loudly applauded by the upstate Republicans but not by his own people, expressed great indignation about the objections that had been raised to the suspension and strong doubts as to the loyalty of Charles Evans Hughes, accusing the latter of having some "disloyal element in his makeup." Steinberg followed McCue on the floor and began to read a prepared speech setting forth his conviction that the Socialists should be seated until proved guilty. An

43. Ibid., January 14, 1920, p. 1; New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 52-53.

objection from the majority leader stopped him. At that point, Steinberg shifted to the defensive for himself and for Justice Hughes who lived in his district, and only after much argument on the floor did the Speaker finally succeed in pounding Steinberg into silence.⁴⁴ A few days later, Steinberg offered a resolution asking the Assembly to condemn the attack on Mr. Hughes's loyalty and to expunge McCue's speech from the record. The resolution was referred to the Judiciary Committee and never heard from again.⁴⁵

One other Republican made a vain effort to undo the damage that he felt had been done by the suspension. Just before Steinberg introduced his last resolution, William C. Amos, also a resident of New York City, entered the fray. Earlier, he had told reporters that he considered the suspension unconstitutional, that the Assembly could expel but that it had no authority to suspend, and that he considered that every act passed in the absence of those five was invalid.⁴⁶ He offered three resolutions on Monday, January 19th: (1) that the Assembly should take no action on bills and make no appropriations until final action should have

44. New York Times, January 14, 1920, p. 1-2.

45. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 77, 86, 89, 121.

46. New York Times, January 15, 1920, p. 1.

been taken on the suspension of the Socialists, (2) that the Socialists be reseated pending final action on their suspension, (3) that Assembly members be afforded an opportunity to explain their votes on the suspension resolution. The first two resolutions were laid on the table; Speaker Sweet ruled the third to be out of order as being an amendment to the rules and could be offered only after due notice. Amos objected. Replied the Speaker, "Take your little rule book and study it and you won't ask for such resolutions to be considered at this time." Later the second resolution was ruled out of order; the first expired on the table.⁴⁷

The Democrats took credit for the last prehearing protest. Right after Steinberg and Amos had offered their resolutions, J. F. McLaughlin, Bronx Democrat, offered one designed to exclude the Attorney-General from taking part in the proceedings. McLaughlin considered the law officer's participation to be an executive invasion into legislative business. The Speaker ruled the resolution out of order, but McCue, of the Hughes attack, appealed from the Chair's decision. "Don't let us have, Mr. Speaker, any more of this talk about this iron sledge we hear so much about."

47. Ibid., January 20, 1920, p. 1; New York, Legislature, Assembly, Journal, 143d. Sess., 1920, I, 77, 84, 121.

I . . . ask for debate on it." With debate now possible on the issue, Louis Cuvillier launched into a speech against those who "with spineless backs . . . one day voted as they felt and the next day seized with fright of their constituents, reversed themselves." Upstate Republicans applauded. Cuvillier continued by stating that his loyalty to his party came second to his loyalty to his country and then, "If these men are guilty as charged, they should not be expelled, but should be taken out and shot. If they are innocent I shall be the first to vote for seating them." Amos challenged Cuvillier on this statement, particularly since the latter was on the Committee that would sit in judgement upon the Socialists. At this point, the would-be-debate degenerated into a rather heated argument before it was quieted. The resolution was laid upon the table and expired.⁴⁸

Outside of the Assembly, plans for the hearing had proceeded. Louis Martin, chairman of the Judiciary Committee, returned to Albany on January 12th, the first Monday following the suspension. The next afternoon, the 13th, the Judiciary Committee met and decided to begin the hearings on the following Tuesday, January 20th, and Speaker Sweet announced that they would be held in the Assembly chamber which would give ample room for

48. Ibid., pp. 77-87; New York Times, January 20, 1920, p. 1.

all of the Assemblymen and the public to attend. A subcommittee consisting of Chairman Martin, Cuvillier, and Edmund B. Jenks, an upstate Republican, met to draft the rules to be used in the hearings.⁴⁹ On January 15th, the Sergeant-at-Arms of the Assembly served each suspended Assemblyman with a copy of the charges and a notice of the hearings.⁵⁰ The records of the Lusk Committee were subpoenaed by the Judiciary Committee, and counsel for that committee was retained by the latter group.⁵¹

Deciding upon a course of action and preparing for it made for busy times for the Socialists. During the days following the suspension, there was much activity at the county headquarters in Manhattan with committee meetings and general excitement. Meetings were held in the local districts, and a big outdoor rally was scheduled at which the ousted five spoke. On January 11th, the first Sunday following the suspension, the Committee of Eight held an all-day conference at the headquarters to consider the details of the legal fight, and they decided to base their defense entirely on constitutional grounds. Morris Hillquit was to be in charge of the defense in spite of the fact that he

49. Ibid., January 14, 1920, p. 1; January 15, 1920, p. 1.

50. Waldman, Albany . . . , p. 48.

51. New York, Legislature, Joint Committee Investigating Seditious Activities, Revolutionary Radicalism . . . , I, 3.

had been for sometime in virtual retirement to recuperate from tuberculosis.⁵² Just a couple of days before the hearings were to begin, Hillquit, in a statement to the press, charged Sweet with planning to befog the issue and to prolong the hearings until public interest lagged and, by means of introducing irrelevant material, to obscure the real question, the principle of representative government.⁵³

The hearings began at eleven o'clock on the morning of January 20 with a large crowd present. The Times described it as the "biggest throng that the Assembly Chamber has ever held." Departmental employees gathered around the speaker's rostrum and the clerk's desk. In the circular space before the rostrum stood two large tables: one for the Assemblymen under charges and their counsel; the other was for counsel for the Committee. Thirteen seats in the first row were reserved for the members of the Judiciary Committee, and behind them sat the members of the press. The Assemblymen occupied the next several rows, all being present that first morning. The rest of the seats in the chamber were taken by the families and friends of the Assemblymen; other guests, of which there were about 2,000 including many Senators and other

52. New York Times, January 9-15, 1920, passim.

53. New York Call, January 19, 1920, p. 1.

state officials, found standing room.⁵⁴

Chairman Martin opened the meeting and proceeded with the formalities. In his initial speech, he emphasized that these proceedings would not be conducted as were ordinary committee hearings because of the nature of the problem, investigating the qualifications of certain Assemblymen to sit in that body. The rules of the state Supreme Court would prevail, and there would be no applause and no smoking in the chamber while the hearings were in progress. The Chairman ascertained that all involved in the affair were in their proper places and asked that appearances of counsel be noted. Attorney-General Newton announced that counsel for the Committee included John B. Stanchfield, Martin W. Littleton, Henry F. Wolf, Archibald E. Stevenson, Samuel A. Berger, and Elon R. Brown.⁵⁵ For the Socialists, Morris Hillquit announced the appearances of himself, Seymour Stedman, Gilbert E. Roe, S. John Block, Walter Nellis, and William Karlin.⁵⁶

54. New York Times, January 21, 1920, pp. 1-2; New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 2-3.

55. Ibid., pp. 2-4. Two days after this Mr. Littleton withdrew from the case and was replaced by former Attorney-General Thomas Carmody. The latter made no appearance in the chamber after February 19, but no explanation was offered in the record for his absence. On January 28, the Attorney-General announced that he had secured Martin Conboy of New York as Associate Counsel (Ibid., pp. 211, 336; II, 1505 et passim).

56. Ibid., I, 4. Because of his illness and the need to conserve his strength for the defense, Hillquit was absent from the hearings January 27-February 11 (Ibid., p. 243 et passim).

The special committee of the New York City Bar Association, true to its purpose, attempted to present its position before the Committee on that first day of the proceedings. Emphasizing that his group represented only the Bar Association and came in the public interest, Charles Evans Hughes obtained recognition and requested permission to make a "concrete suggestion" to the Judiciary Committee. The Chairman replied that a large number of organizations throughout the state had requested permission to appear before the investigating committee, and that it had seemed necessary to adopt a strict rule denying an appearance or hearing to anyone not representing one of the two principals in the question. He indicated that the Committee had power only to determine the qualifications and eligibility of the five men; they had no authority to consider the propriety of suspension. He suggested that the Bar Association could address a memorial to the Assembly through the Speaker or a member. Hughes requested permission to submit for the consideration of the Judiciary Committee a statement prepared by the Special Committee of the Bar Association and to read the conclusion of the statement which suggested that the Judiciary Committee refer the matter back to the legislature with the recommendation that the men be seated and that proper charges of violation of law be made if that was the case. He had the pages begin to distribute copies of the statement about the chamber even as he continued talking. The Chairman ordered the dis-

tribution of the briefs suspended and continued the proceedings with a discussion of the charges.⁵⁷ When Martin forbade the pages to distribute Hughes's statement in the chamber, the latter "hurriedly crammed his papers into his brief case, rose, bowed gravely to the Assembly Committee and walked out, followed by the other members of the Committee for the Bar Association."⁵⁸ That night, Hughes and his Committee returned to New York City.

The Special Committee, with Assemblyman Amos's help, took their case to the Assembly with little better results. The following Monday morning, January 26, Amos presented a memorial from the Committee. The Speaker refused to have it read, and Amos asked for "unanimous consent" to its being read. Cuvillier objected. Sweet ordered it laid upon the table and printed as a public document.⁵⁹ Later that day, at the appropriate time, Amos offered a resolution which would instruct the Judiciary Committee to extend to the Bar Association Committee the same privileges extended to the counsel for the Socialists. The resolution was

57. Ibid., pp. 3-6. Waldman quotes the complete statement that was distributed by the pages in his account of the proceedings (Albany . . . , pp. 55-59).

58. New York Times, January 21, 1920, p. 2.

59. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 107; New York Times, January 29, 1920, p. 1. The memorial constitutes Document 30 of the Legislative documents for 1920.

tabled, and although Amos gave notice that he would call it up for debate, no further mention of it is made in the Assembly's records.⁶⁰

The Chairman's statement of the problem, following the Hughes incident, amplified and even supplemented the original resolution. As Martin put it, certain information had been brought to the attention of the Assembly, and that body had charged the Judiciary Committee with determining the truth or falsity of the information. The allegations included the following: (1) that the men in question were members of a party whose platform demanded the complete destruction of the American government "by the fomentation of industrial unrest, the bringing into play of force and violence and direct actions by the mass;" (2) that these men advocated these principles and favored minority rule; (3) that they have "declared their solidarity" with the Soviet Russian government; (4) that the party to which these men belonged had denounced the war, its purposes, and motive and pledged its members to oppose it; (5) that these men did oppose the war; (6) that they had been elected under the pretense that they wished to represent the people, when really they were using this as a blind to con-

60. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 121, 134-135, 137.

ceal their true intention of overthrowing the government; (7) "that these men are with others engaged in a large and well-organized conspiracy to subvert the due administration of law and to destroy the right to hold and own property honestly acquired, to weaken the family tie . . . , to destroy the influence of the church and overturn the whole fabric of a constitutional form of government"61 Comparison of this list of charges with the original62 will reveal that several of the more specific points had been dropped in favor of more general and even sensational charges that lend themselves much better, intentionally or otherwise, to the amassing of a tremendous amount of material of varying degrees of relevancy.

Before the taking of testimony began, Hillquit requested and received permission to make several preliminary motions. First, he challenged the right of the Judiciary Committee to conduct the proceedings because the members had been appointed by the man who first made the accusations, the Speaker of the Assembly, and because, by voting for the resolution, each of the members had made a public declaration of conviction of the guilt of the Socialists. When this was denied by the Chairman, Hillquit

61. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 7-8.

62. Supra, pp. 38-39.

challenged certain individual members of the committee: those who were members of the Lusk Committee because they had formed and propagated opinions about the organization involved in the charges, and Cuvillier because of his statement recommending that if the Socialists were guilty they should be shot. This motion, too, was denied. Hillquit made his final motion: that the Committee recommend that the Assembly dismiss the proceedings as having no justification in the constitution or statute law of the state. Only on the basis of a question involving their election, their citizenship, or residency could the men be suspended or expelled from the Assembly, he argued. All three of these were discussed at some length both by Hillquit and by counsel for the Committee, and, on the last motion, the Chairman withheld his ruling until the following morning when he overruled it. An objection had been granted to the Socialists in each case. Hillquit allowed other members of the counsel for the Socialists to make the last three preliminary motions. Roe moved that the Committee report to the Assembly that the proceedings were illegal because the Assembly, having no right to suspend but only to expel, had by the act of suspension constituted itself an illegal body. This motion was denied as was the following, argued at great length by Stedman, that the charges, even were they proved, constituted insufficient grounds for expulsion. Finally, S. John Block moved

that the Socialists be served with a bill of particulars of the general allegations contained in the resolution.⁶³

The decision of the Chairman on the last of the preliminary motions, the one made by Block, was indicative of the course the hearings were to take. After extensive argument from both sides, the Chairman stated that each seemed generally conversant with what the other intended to prove, and that adhering to the strict legal procedure of compelling a bill of particulars would confine the investigation to such narrow channels that the results would not be completely satisfactory. He assured the Socialists that the evidence each day would be furnished them and that any delay needed to study it or to gather contradictory evidence would be granted. At this point, he mentioned that great latitude would be allowed in admitting evidence. Then he denied the motion.⁶⁴ By this decision, the Chairman had not only placed the Socialists' defense on a day-to-day basis but, by adhering to the generally-worded allegations in the resolution and his own earlier statement and by refusing to confine the case in strict legal channels, had indicated the lack of clearly-defined limits to the scope of

63. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 8-145.

64. Ibid., pp. 145-146.

the hearings.

As the first phase of the Albany affair drew to a close that Wednesday afternoon, January 21, the Old Guard was still very much in control. Reaction to the suspension had been and was, in many quarters, strong and negative but to no immediate avail. In spite of the attitude of certain influential party members, particularly from the New York City area, the issue had been kept out of party meetings, the Assembly members had remained loyal to the Speaker, the Judiciary Chairman had quashed troublesome motions and appearances in that body, and the party break had so far been averted. The charges had become vaguer and more general rather than more specific thus permitting of a more rambling and extended hearing, whatever the motive for their looseness might have been.

CHAPTER IV

CASE AGAINST THE SOCIALISTS

The Albany affair entered a new phase on the third morning of the hearings, Thursday, January 22, when the lawyers for the Judiciary Committee began to present their case against the Socialists. The Chairman of the Committee, Louis M. Martin, imposed little restraint upon the scope covered by the testimony. Rather than thinking of themselves as investigators, the attorneys adopted the role of prosecutors and sought to prove their case by the amassing of an overwhelming amount of evidence, both testimony and, especially, documents. Their basic concern lay in proving the treasonable and conspiratorial nature of the party; only a small amount of evidence was entered against any of the five suspended Assemblymen as individuals. Repeatedly, the Socialist counsellors objected to the manner in which the hearings were conducted, but their objections were to no avail.

The very first incident of the day indicated the breadth the hearings would take. Stanchfield, one of the members of Counsel for the Committee, asked Julius Gerber, a New York City Socialist prominent in party activities on both the state and

local levels, to take the stand. At this point, Hillquit inquired if the hearings were proceeding to the taking of evidence. The Chairman replied in the affirmative, and the Socialist requested permission to read certain admissions into the record, thereby saving some time. "We purpose to prove the case in our own way," promptly objected Stanchfield. Discussion occurred. Finally, the Chairman ruled, ". . . counsel objects to the admission under the theory, I suppose, that it would narrow the issues and prevent a full and further examination. Therefore, I should have to deny your motion."¹ Hillquit took an exception to the ruling, and the hearings proceeded.

With the two witnesses called during the remainder of the morning, the Committee's counsel began their accumulation of documents. Julius Gerber took the stand as the first witness in the proceedings; he was followed by Francis M. Hugo, the Secretary of State of New York. Stanchfield first asked Gerber for the national constitution of the party, which the latter produced and Stanchfield offered in evidence. Hillquit made no objection. Then, Stanchfield read selected passages from the constitution into the record concentrating on passages which indicated the tightly-knit organization of the party, its political demands,

1. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 150.

and its provisions for members who either did not speak English or were under the voting age. The same procedure was followed with the state constitution and the by-laws for the New York County party. Gerber identified two application cards for membership in the Socialist Party, one signed by Samuel Orr and the other by Samuel A. DeWitt. These were received as exhibits in evidence, and the court accepted Hillquit's admission that the other three had signed similar cards although those cards could not presently be located. Following cross-examination of Gerber, Hugo approved as being exact certain copies of the oath of office taken by each of the five before entering the Assembly chamber that January morning.²

The nature of Stanchfield's questions in direct examination made cross examination difficult. After having Gerber identify each document, Stanchfield had proceeded to read the selected passages. In cross-examining Gerber on the state constitution, for example, Hillquit attempted to show that the passages read by Stanchfield had been adopted at an early date and had since been superseded by the New York State election law, but as the Socialist reached the climax of each line of questioning, Stanchfield would object that this was improper cross-examination and should be introduced later as affirmative testimony. The Chairman con-

2. Ibid., pp. 151-164, 179-183.

sistently upheld Stanchfield in spite of Hillquit's arguments that the Committee members would form their opinions on the basis of the information produced by Stanchfield. By the time for affirmative testimony to be presented, declared Hillquit, the members would have forgotten the facts, and would have retained only their opinions. The refutation would then be of little value to the Socialists.³

Again during the afternoon, Hillquit and the Chairman disagreed, this time over the method of handling evidence. Sutherland, a colleague of Stanchfield's, requested permission for the Committee to take into custody at once all of the documents subpoenaed by its counsellors. The Chairman agreed, but Hillquit did not. This procedure would mean that documents would be held by one side for several days before being subjected to inspection and objection by the other side, he protested. Again, Chairman Martin overruled him. Sutherland called to the stand Anna Stern, Secretary of the Bronx local of the Socialist Party, and procured from her the by-laws of the local. Hillquit asked to see the document, and then he approved it as evidence. Next, Sutherland requested from Mrs. Stern the minutes of the local. At this point, Hillquit interrupted to protest that it was illegal to

3. Ibid., pp. 164-179.

take and hold evidence in this way, and he refused to yield his position even when the Chairman finally ruled in Sutherland's favor. Two Assemblymen, Evans and Bloch, dissented from the Chair's ruling. Argument continued until finally Sutherland and Hillquit agreed to a compromise; the documents would be marked for identification and returned to the owners until counsellors for the Socialists and for the Committee could arrange for a meeting wherein to examine the exhibits and determine which of them were desired as evidence.⁴

The next incident suggested the significant role that the conspiracy charge would have on the proceedings. Stanchfield called a Rochester policeman to the stand to identify a pamphlet, written in Hebrew, which had been seized by him in a raid on the headquarters of a radical group in Rochester about six weeks earlier. When Stanchfield began to quiz the man about conversation between the policeman and the person from whom he had acquired the pamphlet, Hillquit objected that the man was unknown to the defense and that his testimony was irrelevant. Countered Stanchfield, the five Socialists were charged with being parties to a conspiracy to subvert the law and forcefully overturn the government, and in a conspiracy case any testimony could be offered.

4. Ibid., pp. 189-198.

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Stedman protested that the existence of a conspiracy case must be proved before this evidence could be submitted, but the Chairman ruled that the evidence could be heard and then, if invalid, would be thrown out. By that time, the damage would already have been done, objected Hillquit. The Chairman overruled his objection and granted him an exception; Assemblymen Evans and Bloch dissented from the Chairman's ruling.⁵

The use of intentionally distorted evidence suggests that the Committee's Counsel was more interested in prosecuting than in investigating. Stanchfield called Charles M. Robinton, a translator for the Lusk Committee, to the stand to present a partial translation of the pamphlet which had been previously identified by the Rochester policeman. After Hillquit's objection of irrelevancy had been overruled by the Chairman, Stanchfield proceeded to read the translated portions all of which castigated evolutionary Socialism, preached revolutionary Socialism, praised Bolshevism, condemned the state, and advocated mustering a workers' army in preparation for the revolution. When Hillquit was allowed to cross-examine the witness, he quickly established that the latter had received from the Lusk Committee the pamphlet in question plus one other with the instructions that he was to

5. Ibid., pp. 198-204.

translate any passages which could be used against Socialism. There was no indication that either booklet expressed official party views, and the one which had been read aloud was obviously a discussion of current Socialist theories with no official endorsement of any of the theories presented. After all of this, the Chairman refused Hillquit's motion to strike out both pamphlets as evidence.⁶ Before the following day's session, at Stedman's insistence, Robinton translated the remainder of the pamphlet which already had been partially translated, and Sutherland read the thing into the record in its entirety.⁷

At the close of that first day of testimony, the Socialists were not the only ones leaving the Assembly chamber who were unhappy with the rulings made by the Chairman during the day. Their frequent objections had all been overruled; the objections made by their opponents had generally been sustained. Two members of the Committee, Assemblymen Evans and Bloch, had twice registered their dissent from these rulings. The following day, a news article on the front page of the New York Times reported that some unnamed persons in the Assembly chamber, other than the Socialist lawyers, had commented that Martin's conduct

6. Ibid., pp. 205-228.

7. Ibid., pp. 244-262.

of the investigation "established a new record for steam roller tactics and disregard for the precedent and practice usually followed in judicial proceedings."⁸

Stanchfield used his first onslaught against the three more vulnerable Socialists as an excuse to introduce into the record extraneous matter. This attack began on Thursday afternoon, January 22, and continued intermittently at the following session on Tuesday, January 27. That first time, Stanchfield called to the stand a shorthand reporter who had been hired by the Lusk Committee to attend and take notes on a public meeting which had been held on Manhattan to celebrate the second anniversary of the Russian Soviet Republic. Among the speakers at the meeting had been August Claessens. From the transcript which, along with the notes, was offered in evidence, Stanchfield read Claessen's speech advocating a complete social revolution but protesting that this would be peaceful unless the minority refused to yield when the majority demanded that they do so.⁹ On Tuesday, Stanchfield produced a copy of the New York Call in which appeared an advertisement for the meeting at which Claessens had spoken as well as for one being held simultaneously and for the same purpose in the

8. New York Times, January 23, 1920, p. 1.

9. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 228-239, 274-275.

Bronx. The advertisement listed as chairman of the Manhattan meeting Alexander Trachtenberg, Socialist educator, and from the transcript which had been entered as evidence when Claessens speech was read, Stanchfield proceeded to read Trachtenberg's speech, an almost incoherent collection of radical platitudes and jargon.¹⁰

The counsellors for the Committee made their first attempt to show a connection between the Socialist Party and the Communist International on Tuesday, the 27th. Sutherland recalled the Rochester policeman to the stand to testify that he had taken a letter and a pamphlet copy of the "Manifesto of the Communist International" from the Rochester building at the same time that he had taken the Hebrew pamphlet. The letter, written to the Rochester local by a man in the literature department of the national office of the Socialist Party, announced the publication in pamphlet form of this manifesto. After reading the letter into the record, Sutherland read the pamphlet which, signed by Lenin and Trotsky among others, damned the evolutionary socialist position and analyzed recent history and current events and trends from a socialist viewpoint. Sutherland followed this by reading what he considered to be the response of the American party, the manifesto which had been adopted by the national convention in August of

10. Ibid., pp. 262-274.

1919. As evidence of the relationship between the two, Sutherland noted some similarity and the fact that the first was circulated by the literature department of the Socialist Party of America.¹¹

Another incident on that Tuesday further indicates the Chairman's lack of discrimination in admitting evidence. Stanchfield called to the witness stand a special agent for the Lusk Committee who identified a letter written to L.C.A.K. Martens, representative of the Russian Soviet Republic ^(U.S.S.R.) in the United States, by Rebecca Buhay, the secretary of the Eighth Assembly District of the New York local of the Party, pledging cooperation in establishing a Workers' Government of Russia in America. Stedman objected to its admission because the woman represented the Left Wing rather than the organization which was represented by Waldman, who was from the eighth Assembly District. Said the Chairman, "If that is so there won't be any harm," and he admitted the letter. Assemblyman Bloch dissented from the Chairman's ruling.¹²

The problem of legitimate evidence reached a climax early Wednesday morning, January 28, when Stanchfield presented his guiding theory. The frequent and strong objections of the Social-

11. Ibid., pp. 277-308.

12. Ibid., pp. 320-323, 366.

ists to the evidence which had been offered by Counsel for the Committee and admitted by the Chairman and also the dissents from the Chairman's rulings which had been noted for two of the Assemblymen had, from the beginning of the hearings, indicated a general lack of agreement as to what was admissable. That morning, Stedman renewed his motion to strike out the letter of Buhay to Martens and also his motion to strike out Trachtenberg's speech. His grounds for the first were that Buhay's organization was the Left Wing which had not only opposed Waldman in the primary but which had been completely severed from the right wing which Waldman represented. The second motion he based on the theory that, unless the meeting itself was illegal, no man present could be held accountable for the actions of any other man present. Sutherland countered, but Stedman pursued his object. Finally Stanchfield took the floor:

Now the whole theory of this investigation rests upon the proposition that the Socialist Party, of which the five members under investigation are confessedly, conceded members, has embarked upon a program that calls for the overthrow of our form of government, some assert by constitutional means, others by violence. Now, assuming that that program is the basic charge under investigation, then my argument runs along this line: That every pamphlet, every declaration, every speech, every statement of every man who is affiliated with or belongs to that party, not necessarily in a technical sense of belonging to it, but everybody who upholds those claims, who supports those principles, who stands upon that platform, is bound by the speeches, the sentiments, the writings, the books, the publications of every other man affiliated with that association, whether they were present at the time when it was made

or they were uttered, or whether they were absent.

Now confessedly that is a correct statement in broad, clear and comprehensive language of the claim that we make.¹³

After some additional discussion, the Chairman denied Stedman's motions.¹⁴

Shortly after noon on that same day, Chairman Martin further clarified the prevailing rules on the presentation of evidence in this case. Sutherland sought to read into the record some testimony of L.C.A.K. Martens, which had been taken before a session of the Lusk Committee. By this testimony, the counselor hoped to show a relationship between the Socialist Party in America and the political parties in Russia. Stedman objected. He and the lawyers for the Committee presented their arguments at some length before the Chairman ended the discussion and read into the record the rule of evidence that he was following. According to that rule, the existence of a common or continuous purpose could be proved by demonstrating that a series of acts manifested a common design or plan of operation, and if the common purpose was unlawful, it constituted a conspiracy. Because the Martens testimony was an attempt to connect the American socialists and the Russian Soviet Government, the Chairman ruled

13. Ibid., p. 335.

14. Ibid., pp. 332-336.

it admissible.¹⁵

The evidence that was offered during the remainder of the day illustrated the rule. Earlier in the hearings, a transcript had been received in evidence which included all of the speeches that had been made at the Brooklyn meeting to celebrate the Soviet's anniversary. Several of the speeches had been made by Solomon, who had been the Master of Ceremonies; but, also accepted as evidence, merely because they had been made on the same occasion that Solomon's had, were speeches by two other people, a Socialist alderman and a Socialist propagandist.¹⁶

The evidence offered on Thursday, January 29, followed the pattern already set, a general accumulating of miscellaneous information. Stanchfield, over Stedman's objections, began the day by reading excerpts from the Socialist Congressional Campaign Book for 1914 concluding with a speech of Eugene Debs, the well-known Socialist leader. Next, he offered in evidence a newspaper version of the "Constitution of the World's First Socialist Republic" and a pamphlet copy of the "Decrees and Constitution of Soviet Russia," the latter of which was ordered copied into the record. A New York lawyer testified to a few incriminating remarks reputedly made by

15. Ibid., pp. 380-403.

16. Ibid., pp. 403-423.

August Claessens. The clerk of a United States court in New York, subpoenaed, brought the records of the conviction under the Espionage Act of three Syracuse men who had been indicted for distributing handbills obtained from the National Office of the Socialist Party. The bills depicted persecution of political prisoners. On the basis of irrelevancy, the Socialists objected to the admission of these records. The Chairman at first admitted his inability to see the connection with the case at hand but then, he remarked, "Well, I cannot see how it will hurt very much," and admitted it.¹⁷

To connect Claessens with innumerable radical publications and with an organization which had been convicted of espionage, Sutherland employed the testimony of Algernon Lee, a Socialist educator. The lawyer opened the direct examination by interrogating Lee on his relationship with the Socialist Party and the Rand School of Social Science. After bringing out the fact that the school was organized as an auxiliary to the Socialist Party for the purpose of teaching the general public about Socialism and related subjects, Sutherland established that Claessens was an instructor at this school and that the school's Lecture Bureau arranged bookings for him and sometimes for Solomon. Sutherland next offered in evidence the record of conviction on a charge of

17. Ibid., pp. 426-441, 487-491.

espionage of the corporation which owned and operated the Rand School. From here the lawyer shifted to some discussion of the publications of the Rand School press and those sold in the Rand Book Store, reading excerpts from some and inquiring about others.¹⁸

The discussion of literature available in the Rand School book store encouraged Stedman to go beyond cross-examination with this witness, and, with Martin's approval, to present general background information for the various radical documents which had been offered as evidence. Such subjects as the history of the Internationals, the development of the situation in Russia including the various political parties there, the distinctions and relationships between those parties, the meaning of several terms such as bourgeoisie and proletariat, and the Socialist attitude toward war in different countries and in general, Lee dealt with all.¹⁹

Even the legislative records of Socialist Assemblymen in years past were not held sacred. With Algernon Lee still on the witness stand, Conboy began offering as evidence certified copies of bills, which had been introduced into the Assembly during the sessions of 1918 and 1919, and which provided for appropriations

18. Ibid., pp. 441-486, 518-526.

19. Ibid., pp. 534-566.

for the National Guard, for military training of boys, for publication of a law relating to the desecration of the flag, and other similar ones, all of which the Socialists had opposed. Shortly after this, while Conboy was reading various anti-war tracts from the record of Victor Berger's trial for violation of the Espionage Act, Wolff interrupted him to offer in evidence five anti-military bills which had been introduced by Claessens into the Assembly during the session of 1919.²⁰ On the first appropriate day following this, J. F. McLaughlin, a Democrat from the Bronx, offered in the Assembly a resolution which would forbid action of this nature as a violation of legislative immunity. When the resolution came to a vote, only eight Democrats and one Manhattan Republican voted for it.²¹

On Tuesday morning, February 3, while McLaughlin's resolution was still lying on the table in the Assembly awaiting its chance to be voted upon, the investigators again delved into the Assembly records for evidence to use against the Socialists. Stanchfield called as his first witness of the day Mitchell A. Trahan, a Republican Assemblyman from Yonkers. Trahan testified that he had been present in the Assembly in 1918 when a member,

20. Ibid., pp. 566-578, 594-633.

21. New York, Legislature, Assembly, Journal, 143d Sess., I, 168, 179-180, 214-215.

Albert Link of Kings County, had offered a resolution which ^{paid}~~payed~~ tribute to Lincoln and reaffirmed faith in the supremacy of the United States' cause in the war. The ten Socialist members were the only ones who had remained seated during the rising vote. When Stedman objected to the admission of this as evidence, Stanchfield replied that it was a "link in the chain" of evidence against the Socialists for hampering the nation and state in their war activities. The Chairman overruled Stedman's objections.²²

From the viewpoint of the investigators, probably the most important witness called by ~~the~~ counsel for the Committee was Peter W. Collins, an American Federation of Labor organizer and professional anti-socialist who denied having any acquaintance with the defendants. Direct examination of him was more extensive both in length and in scope than that of any other witness called by this side. The Chairman explained, when he refused to allow Conboy to interrupt with questions during the cross-examination, "I regard this witness as a very valuable addition to this case. He is a gentleman, evidently, of large experience."²³ Also indicative of the Chairman's interest in Collins's testimony, as well as of

22. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 636-640.

23. Ibid., p. 851; for the complete Collins testimony, see pp. 640-690, 758-790, 850-877, 881, 886-913.

the Committee's interest, is the unusually extensive questioning of the witness by the members of the Committee which the Chairman permitted at the close of the cross-examination. And when the case was finally closed, a passage from Collins's testimony was quoted in the majority report of the Committee to the legislature while, in his memoranda accompanying the report, one of the members cited a bit of Collins's testimony as part of his reason for recommending expulsion.

Collins was a most objectionable witness from the standpoint of the Socialists. An editorial in the Call suggested that Sweet had "shot his strongest bolt" earlier in the proceedings and then had subpoenaed Collins in "an attempt to muddy the waters."²⁴ Both on direct and cross-examination his answers to questions were usually lengthy and involved, giving unrequested information or opinions. This type of testimony failed to disturb the prosecuting attorneys, but Stedman objected to it frequently as he did also to the witness's tendency to define the words in the questions before answering. Testifying as an expert, Collins was allowed and even requested to give his own opinions as well as the facts. The nature of both is suggested in a statement which he made shortly after taking the stand, "Everyone knows that

24. New York Call, February 4, 1920, p. 8.

Communism and Socialism is exactly the same thing."²⁵ When asked for the source of his information, he frequently appealed either to vague conversations or to the writings of obscure Socialists, and even anti-Socialists. An example of this last instance is a statement which Collins attributed to Eugene Debs. Examination of the document from which he quoted revealed that the statement was attributed to Debs by Samuel Gompers, an opponent of Socialism.²⁶ Another example of this vagueness about sources occurred when he declared that "at least 70 per cent of the Socialist Party dues-paying members in America are aliens" and based this information "on the most exhaustive contact and experience among the Socialists in recent years as well as past years."²⁷

One incident that occurred during the Collins testimony perhaps suggests the attitude of the ~~φ~~counsel for the Committee toward their role in the whole affair. Conboy had sought to read into the record an excerpt from the proceedings of an American Federation of Labor convention when Stedman objected. The Chairman sustained the objection. Stanchfield, in developing his argument for reading the passage, mentioned that "This case is

25. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 646.

26. Ibid., pp. 648-650.

27. Ibid., p. 891.

being conducted as a case rather than as an investigation, and is being tried . . . before the Court of Public Opinion" The Chairman failed to reprimand him.²⁸

The extent to which the Committee's lawyers would go in securing testimony against the Socialists became apparent when Ellen Chivers mounted the witness stand on Tuesday afternoon, ~~January~~^{February} 3. A slight, fair-haired stenographer from Brooklyn, she told of Solomon's refusal to let a group of soldiers use the platform from which he was speaking on a street corner in the spring of 1917. At the same time, she alleged, he had spat on the flag and sat down while a band played "The Star Spangled Banner."²⁹ Under cross-examination, the girl repeatedly contradicted herself. For example, she gave her present age as being almost eighteen but testified that she had been almost seventeen in the spring of 1917, three years previous. Another time, she said that she had met a woman at a meeting; later in her testimony, she denied that any women had been present at the meeting except herself.³⁰

Miss Chivers's testimony caused some disturbance among

28. Ibid., pp. 686-687.

29. Ibid., pp. 705-707; New York Times, February 4, 1920, p. 3.

30. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 707-723.

the Committeemen. On Wednesday, Assemblyman Bloch received permission to make a motion, explained that Chiver's testimony was obviously impossible, and moved that it be stricken from the record. The Chairman denied the motion. Later, Assemblyman Rowe moved that Bloch's statements be stricken from the record. The Committee members agreed although one of them, Evans, before voting explained that he felt that Bloch's motion had been improper. Because no testimony could legally be stricken from the record as incredible, he maintained "no member of the Committee should express his opinion on the record as to the credibility of a witness."³¹

Most of the small amount of testimony directed against Solomon and Waldman personally was offered about this time. On Tuesday, February 3, a New York attorney testified to having heard Waldman, in a speech delivered during the fall of 1918, make several remarks expressing something less than complete sympathy with the war effort. Two policemen told of Solomon shouting encouragement to a mob obstructing the passage of a streetcar after a scheduled strike of the drivers had failed to occur. On the following day, a political opponent of Solomon's in the previous election told the assemblage of having heard Solomon boast

³¹Ibid., pp. 790-793.

of being a revolutionary Socialist and of having supported the Socialists' anti-war position.³²

On the following Tuesday, February 10, the conspiracy theory was again employed to justify the admission into the record of a document pertaining to the Bolsheviks in Russia. Shortly after the noon recess on Thursday, Stanchfield had offered in evidence a report on certain aspects of the Bolshevik movement in Russia which had been compiled by the Russian Division of the United States Department of State. Stedman had withheld his objections until Tuesday at which time he maintained, among other things, that the document had no bearing on this case. Argued Stanchfield:

Therefore, upon the theory of the combination which we started out to demonstrate upon this investigation, all these acts of other people, wherever they may be situated, that run toward the accomplishment of a common purpose and a common design, are admissible upon this investigation and would be in a legal tribunal, if we were trying these people for conspiracy either in the State or in the Federal courts;....³³

The Chairman accepted the report and ordered it printed in the record.³⁴

The prosecution found a more tangible link between the

³²Ibid., pp. 691-705, 730-752, 813-839.

³³Ibid., p. 920.

³⁴Ibid., pp. 871-879, 919-921.

American Socialists and the Russian Bolsheviks in the form of a just completed party action. Earlier in the hearings, it had been noted that the last National Convention, held in August 1919, had tentatively adopted certain amendments to the constitution and two alternative reports, each expressing an attitude toward both the Moscow and the Second Internationals. Final approval of the amendments and the choice between the two reports lay with the registered party members, to each of whom a ballot had been mailed. In response to a question by Cuvillier, Block reported on Tuesday, February 10, that the returns were in, that all of the constitutional amendments had been approved, and that the second of the two reports, the minority report, had been adopted. This one, the more radical of the two, declared that the Second International was dead and that the Party would support the Third (Moscow) International. Block indicated that only about one-sixth or one-seventh of the eligible members had actually voted.³⁵

Except as an indication of the bulk and variety of the proof which was offered throughout this phase of the hearings by the Committee's attorneys, the evidence submitted by them on their last day of regular testimony was insignificant. The Call

³⁵ Ibid., pp. 933-934.

described it as "hash."³⁶ Among other things, it included anti-enlistment pledges signed by Claessens and Waldman prior to the war, excerpts from L.C.A.K. Marten's testimony and letters to him from various radical groups, and the testimony of a man from Winnipeg, Canada on the horrors of a general strike. Also, three of the five ousted ones were the objects of testimony that dealt with speeches they had made in times past.³⁷

Late that afternoon, the Chairman, in contrast to his earlier attitude,³⁸ reprimanded the attorneys for the Committee for thinking of the proceedings in terms of a trial. Stanchfield announced, "So far as counsel for the Committee are concerned, we rest." Replied the Chairman, "I do not understand there is any such thing as 'rest' in this case. This is an investigation, and the idea of resting and moving for a nonsuit is ridiculous. This is an investigation, and we have a right to hear it anyway we like." After comments from both Stanchfield and Stedman, the Chairman called their attention to the resolution that provided for the investigation. He read it to the assembled group, and Stanchfield repeated his statement in an altered form, "Then that

36. New York Call, February 11, 1920, p. 2.

37. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 922-956, 958-961, 972, 989.

38. Supra, pp. 84-85.

concludes the presentation of evidence by counsel for the Committee." Amended the Chairman, "As far as you can see now," and Stanchfield replied in the affirmative. The court took a brief recess.³⁹

In reality, this did not prove to be the end of that section of the proceedings. They continued through the remainder of Tuesday, all of Wednesday, and part of the following Tuesday (February 17). All of the documents which had been read in part by the counsellors for the Committee, at the insistence of the Socialists, were now read in their entirety. In what the Chairman called redirect examination, there now occurred the introduction of a series of articles and statements in which various Socialists had discussed their opposition to the war effort and some discussion of the recent amendments to the Party's national constitution and of the Socialists' situation in the contemporary world. Wednesday afternoon, Roe spoke at some length in presenting his motions to strike from the record a large amount of the evidence that had been presented; he had his lengthier brief on the subject entered into the record. The Chairman denied all of the motions although he acknowledged that some of the evidence

39. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 999-1000.

should be disregarded by the Committee in considering the questions before it.⁴⁰ At the close of Wednesday's session, counsel for the Committee filed with that body a brief which organized and summarized the evidence against the Socialists. Stedman objected to the brief to no avail.⁴¹

That there was still some opposition to the hearings on the part of certain Republican Assemblymen seems to be indicated by an incident that occurred at the close of that Wednesday's session. Assemblyman William W. Pellet, a Republican from Manhattan, called a special meeting of the Judiciary Committee to suggest that the hearings be dropped and that the Socialists be returned to their seats. Pellet argued, according to the Times, that no evidence of sufficient import to unseat the five had been presented, and while he had no plans to offer a motion to terminate the affair, he wanted to know what the others thought. Chairman Martin maintained that the Committee had no authority to end the hearings at this point, and that if they did have the authority, it would be unfair to the Socialists who would have had no chance to present their case after the other side had been heard. Later, reported the Times, "it was learned" that Pellet, in call-

40. Ibid., pp. 1121-1139.

41. Ibid., II, 1155-1243, 1266.

ing the meeting, had been encouraged by other New York City Republican Assemblymen who agreed with his views.⁴²

During the morning of February 17, the formal testimony against the Socialists was concluded. The scope of the testimony that had been offered had fulfilled the promise of the vague charges. The conspiracy clause had been used in such a way as to permit the admission of evidence connected, not just with these five, but with any aspect of the radical movement. While cross-examination had been extensive at times, it had done little to counteract the direct testimony offered. Only three of the five had been attacked on personal grounds; emphasis in the case had been on the affiliation of the five with the Socialist Party. Several Assemblymen had joined with the Socialist counsellors in their vain objections to the manner in which the proceedings were conducted. As the prosecution rested its case, the only consolation available for the Socialists was the assurance of a chance to present their position on so public a stage.

42. New York Times, February 12, 1920, p. 15.

CHAPTER V

THE HEARINGS CONCLUDED

The development of the case for the defense and the final arguments for both sides followed a more orderly course than had the previous part of the proceedings. The five Socialists and their lawyers had decided, early in the affair, to utilize the hearings to the fullest extent possible for propaganda purposes, and to that end they carefully planned their defense. In the selection of evidence, the Chairman permitted the defendants the same scope that he had permitted the prosecution. The attorneys for the defense relied primarily upon personal testimony, rather than documents, to develop their case. They took the main points raised during the previous month and, where appropriate, attempted to refute those points; where possible, they attempted to show that the testimony was invalid; the rest of the evidence they attempted to clarify and explain. Consuming the closing sessions were the two final arguments which each side presented. These arguments summarized the charges and evidence that had been submitted and stressed certain basic issues involved in the case.

Long before the counsel for the Committee had concluded

its presentation of evidence, the Socialists began to organize their defense. The Committee of Eight, the official group appointed to direct the defense, began to make plans for the trial immediately after the five had returned from Albany on that night in early January.¹ Although several of the five threatened to leave the hearings if it appeared that they would not receive a fair trial, the Times reported on January 24 that they had decided to go through with the affair regardless of their treatment. The two reasons given were as follows: (1) the Socialists desired to fill the record with exceptions in case court action followed the hearings, and (2) the proceedings offered an excellent opportunity for propagandizing.² Samuel Orr confirmed this on the following day at a party meeting in Brooklyn. "We are going to stay through the trial," declared Orr, "for the sole purpose of exposing to the people of the state and country the absurdity of the charges and the reasons why Speaker Sweet and his cohorts consider the Socialists inimical to the best interests of the state."³

Articles in both the Times and the Call reflected the

1. Supra, p. 43.

2. New York Times, January 24, 1920, p. 3.

3. New York Call, January 26, 1920, p. 1.

development of the Socialists' plans for their defense. On February 9, a little over a week before the defense was to begin presenting its case, a news story in the Call revealed the Socialists' tentative plans: the five suspended men would testify first; a clergyman and an expert on Soviet affairs would follow to answer some of the charges.⁴ One recurring idea expressed in the various articles was that of calling Speaker Sweet to the witness stand. Because of disagreement among the attorneys about the advisability of doing this, the decision was left in the hands of Morris Hillquit who evidently disapproved for Sweet did not testify.⁵ In an article datelined February 16, the day before the Socialists began their case, the Call announced that plans for the defense had almost been completed. Five main points would be discussed: (1) the philosophy of Socialism, (2) the "harmony of purpose" between Socialism and the labor movement, (3) the fact that Socialism and religion are not necessarily opposed, (4) the Socialists' legislative programs from 1917 to 1919, and (5) the program of the Republican leaders of the legislature.⁶

The Socialists developed their case in two parts. During

4. Ibid., February 9, 1920, p. 1.

5. New York Times, January 25, 1920, p. 3; February 5, 1920, p. 3; February 8, 1920, p. 16.

6. New York Call, February 17, 1920, p. 1.

the first week and a half (February 1/-25) they attempted to explain in detail certain basic questions that had arisen during the course of the prosecution's presentation of evidence. These questions pertained to the party as a whole. Slightly more than two days (February 25-27) sufficed for the Assemblymen to answer the charges that had been made against them as individuals.

Probably the most significant evidence for the Socialists during the first part of their case was that offered by Morris Hillquit, one of the foremost theorists in the American party. Switching from his role of defense lawyer, he testified for almost all of the first three days. The activities of the Internationals, the Socialists' stand on war, his party's position on the League of Nations, Russia under the Soviet government, and the Socialists' attitude toward religion, all were topics of his testimony.⁷ All of these subjects had been discussed by at least one witness for the Committee; most of them had been discussed by Peter W. Collins, the anti-Socialist who had testified at such length for the prosecution. In addition to explaining, from a different point of view, many of the same matters considered by Collins, Hillquit denounced and attempted to refute a

7. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , II, 1267-1363.

number of statements made by the earlier witness. A typical example of this procedure follows: Stedman read from the record a passage in which Collins charged that the Socialists advocated a universal war and had voted for war credits. Replied Hillquit, "It is about as false and as far the opposite of the true facts as any statement could possibly be."⁸ Then he proceeded to discuss the question at some length.

Readily accepting Hillquit as an authority, the Chairman permitted as much latitude in the Socialist's testimony as had been permitted in the earlier part of the hearings. The lawyers for the Committee made frequent objections to Hillquit's testimony during the direct examination, but the Chairman almost invariably overruled them. For example, Stedman asked the witness to explain the meaning of the phrase "International Socialist Revolution." Sutherland interrupted to suggest that the witness either quote "some authoritative writer or speaker" or state that he was giving his own interpretation. Amid some discussion, the Chairman replied that Hillquit was "a pretty good expert on Socialism" and "a recognized leader of the party in this country;" then he permitted the witness to answer.⁹ At another point, Conboy ob-

8. Ibid., p. 1288.

9. Ibid., pp. 1280-1281.

jected to Hillquit's elaborating on the platforms and manifestoes which expressed the party's position on the war. The Committee's lawyers considered that the documents constituted ample evidence of the Socialists' attitude. Chairman Martin overruled the objections.¹⁰

The Committee, including Chairman Martin, evidenced a definite interest in Hillquit's testimony. Waldman later recalled that Hillquit "quickly converted the chamber into a classroom on Socialism."¹¹ No doubt that statement is an exaggeration, but the large number of questions the committeemen and their lawyers asked the witness indicates some concern with what he was saying. Generally, the questioners sought factual information, but several times they requested an opinion or an interpretation regarding some aspect of Socialist practice or theory. Only once did the Chairman limit the questioning, and on that occasion a particularly belligerent Assemblyman had lowered the discussion to the point of mere argument with the witness.¹²

Hillquit was followed on the stand by a succession of several Socialists whose testimony was designed to defend the

10. Ibid., pp. 1282-1283.

11. Waldman, Labor Lawyer, p. 106.

12. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , II, 1345-1346.

party as a whole. Attempting to refute the charge that the organization was primarily composed of aliens and run by them were the National Secretary of the Socialist Party of America and the Executive Secretary of the Socialist Party in New York County, men who could produce figures to support their assertions. Seymour Stedman, one of the lawyers for the defense and one with considerable experience in defending people indicted under the Espionage Act, took the stand in an effort to prove that the charges brought against various Socialists under that Act had been based upon written or oral expressions made by the individuals involved. No court, he testified, had found any official party pronouncement in violation of the law. To give evidence on the general aims, objects, and methods of the Socialist Party, the defense attorneys called to the stand Algernon Lee, the educational director of the Rand School of Social Science. Norman Thomas, a young Socialist minister of the Presbyterian denomination, testified that he saw nothing incompatible in being both a good Christian and a good Socialist and that the party was not interested in destroying family life. This part of the case was concluded when Louis Waldman, one of the five suspended men, discussed at some length the role of the Socialists in the legislature: how they prepared bills, the fate of the bills, the attitude of Socialist Assemblymen to bills introduced by other legislators, and the relationship between the individual Socialist

Assemblyman and his party.¹³

With Waldman's testimony, the case for the Socialists passed into its second and final phase, the defense of the three--Waldman, Solomon, and Claessens--who had, as individuals, been the objects of attack by the prosecution. Waldman, already on the stand, continued his testimony with denials of some of the specific incidents that had been charged against him and with explanations of the circumstances surrounding others. Following him, Solomon took the stand to tell all that he could remember about the incident referred to by Ellen Chivers, the self-contradicting witness; two policemen succeeded him on the witness stand to corroborate his story. Later Hillquit recalled Solomon to answer the other charges that had been made against him. August Claessens took the stand on Friday afternoon (February 27) and pleaded extenuating circumstances for the speech which had been entered as evidence against him, and, when cross-examination of the latter witness had been completed, Morris Hillquit announced that the defense had concluded its case.¹⁴

In contrast with the evidence presented by the counsel for the Committee, few documents were entered into the record for the Socialists' cause. The index to the proceedings lists sixteen

13. Ibid., pp. 1497-1748.

14. Ibid., pp. 1748-2017.

exhibits for the Assemblymen as opposed to 115 for the Committee.¹⁵ Of those sixteen, four were offered as evidence before the prosecution concluded its case. Where the defensive testimony is interrupted in order to read some new bit of documentary evidence into the record, with a few exceptions it is at the instigation of one of the attorneys for the Committee and in connection with cross-examination.

The wide scope of evidence permitted the Socialists by the Chairman has already been mentioned. This breadth seems less magnanimous when it is noticed how closely the Socialists, in their testimony, follow the issues raised by their opponents. When challenged, the defense did not hesitate to refer to the earlier discussion of the subject. For example, Sutherland had objected to Hillquit's interpreting the Socialists' attitude toward Russia. Retorted Stedman, "You entirely forget what Mr. Collins testified to. We are only following the proof that you have introduced in evidence."¹⁶ Objections were generally confined, after Hillquit's testimony, to challenging the phrasing of a question or, in a few instances, to a witness's qualifications to answer a particular question.

15. Ibid., III, General Index, pp. 5-13.

16. Ibid., II, 1316.

The two final arguments for each side occupied the last four days of the hearings. Morris Hillquit opened the last phase of the proceedings with a five hour address on Wednesday, March 3. Following him on the next day was Martin Conboy speaking for the Committee. Seymour Stedman presented the concluding argument for the Socialists on March 5, and Elon R. Brown terminated the hearings with the closing argument for the Committee on March 9.

In his speech, each man to some extent related his review of the charges and evidence in the case to a basic philosophical or legal problem involved. Hillquit reminded his listeners of the precedential danger of barring a political party from participation in the government when its candidates had won sufficient support to be elected. The problem of the extent to which a government can go in permitting among the governed loyalties higher than itself was raised by Conboy. Stedman found no law to cover the proceedings and considered that, in the absence of such, if the five were expelled it would be because they had violated the standards and attitudes which the other Assemblymen felt qualified a man for membership in the Assembly. Brown countered by citing precedents to prove that a governing body had a right, higher than the personal rights of the Assemblymen and of their constituents, to expel members it considered dangerous to the government as a

whole.¹⁷

There was an orderliness about the last half of the proceedings that had not characterized the earlier part. The careful planning of the Socialists revealed itself in the well-organized development of their case from the international relations of the party, discussed by Hillquit, through the domestic aspects, to the defense of the five individuals who had been suspended from the Assembly. Relying primarily upon personal testimony rather than documentary evidence and adhering closely to issues raised by the prosecution, the Socialists gave the Chairman no occasion to renounce or even to regret his promise of permitting wide latitude in the introducing of evidence. This orderliness extended even into the final speeches made by each side.

17. Ibid., II, 2037-2052, 2059-2274, III, 2279-2346.

CHAPTER VI

EXPULSION AND CONSEQUENCES

The proceedings, which had begun in such a blustering manner, ended quietly, apparently with limited effect, and still with a dissenting minority. The opening of the hearings had not silenced the protests heard in Albany; neither did the conclusion of them and the differences of opinions about a proper course of action. A scant majority of the members of the Judiciary Committee signed the report which found the Socialist Party guilty of disloyalty. In contrast, the report's recommendations of expulsion passed by a large majority in the Assembly. In neither case did the voting follow party lines. There was little public reaction to the expulsion other than that of the Socialists and some editorial comment in the press, and the effect of the proceedings seemed to be relatively small.

Particularly among New York City Republicans, some opposition to the proceedings and threats to party unity had continued even after the hearings had begun. On January 25, the Times had noted that upstate Assemblymen still seemed solidly behind the

Speaker.¹ On the following day in the Assembly, William C. Amos, a Manhattan Republican, had offered three more resolutions designed to terminate the affair, all three of which expired on the table.² The Times had reported a last effort made in the Assembly on the 27th to seat the Socialists, but it had been quickly blocked.³ Rumors that Theodore Roosevelt, Jr., with Majority Leader Adler's assistance, would lead an attempt to discharge the Judiciary Committee from further consideration of the matter had circulated about the capitol during the last week in January. Adler had denied the rumors; Roosevelt had remained noncommittal; and on February 8, the Times had reported that there had never been any real foundation for the rumors because of the small number of upstate Republicans willing to support Roosevelt.⁴ Rumors of pending revolt within the Judiciary Committee itself had leaked to the press, and these the Chairman had denied.⁵ Significantly, George A. Glynn, the State Republican Chairman, had returned to New York City on January 29 after having spent

1. New York Times, January 26, 1920, p. 1.

2. New York, Legislature, Assembly, Journal, 143d Sess., 1920, I, 121-122, 134-137.

3. New York Times, January 28, 1920, p. 2.

4. Ibid., January 29, 1920, p. 1; February 8, 1920, p. 16.

5. Ibid., January 26, 1920, p. 1; January 30, 1920, p. 1.

several days in Albany in an attempt to remedy some troubles in the Republican organization.⁶ Some GOP leaders had continued to express their fears regarding the effect of the proceedings upon the fall elections, and in early March, Amos had written to Will H. Hays, National Republican Chairman, asking him to repudiate the suspension for this reason.⁷

After the conclusion of the hearings, almost three weeks elapsed before a bare majority of the members of the Judiciary Committee signed the report to the legislature, and even then not more than five of the thirteen members could be considered to be in reasonably complete agreement with the report. The Socialists filed their brief with the Committee on Monday, March 15, and the Committee planned to write the report on Tuesday and Wednesday.⁸ After two weeks of much indecision, a majority finally signed the document on March 29. The seven dissenting Committeemen and two of those who had signed the report submitted memoranda to the legislature explaining their positions.

Using documentary evidence almost entirely, the author of the report, Chairman Martin, had developed the case against the

6. Ibid.

7. Ibid., January 30, 1920, p. 1; February 18, 1920, p. 8; March 7, 1920, p. 14.

8. Ibid., March 14, 1920, p. 12.

Socialist Party. He had extracted a collection of passages from the manifold documents which had been offered in evidence and had tied these passages together with a tendentious commentary. This collection of passages plus commentary constituted the report. Martin had ignored the extensive verbal testimony except in a few instances where certain passages tended to support the selected documentary evidence. In the report, Martin had reviewed particular aspects of the party's organization; then he had dwelt at length upon the Socialists' anti-war program suggesting that the latter was really designed to weaken the country's defense in preparation for the radical revolution. The author had concluded that the party was guilty of being "at present committed to a continuing policy of disloyalty." Completely ignored had been the charges against the three individuals. Martin had recommended expulsion for all five because, by their association with the party, they had "repudiated their national loyalty" and had "dedicated themselves to the overthrow of the Government of the United States by all available means"9

Little agreement regarding the proceedings existed among the seven Committeemen who submitted memoranda to the Assembly.

9. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , III, 2673-2716; quotations are from p. 2714.

The two who had signed the majority report were in agreement with it in recommending expulsion for the Socialists, but they preferred even more conservative statements of the case; the memorandum of one of the two, Assemblyman Rowe from Erie County, amounted to little more than a diatribe against the Socialists. The other six dissenting Committeemen all objected to expelling a political party as such from the legislature. One of them, Assemblyman Lown, a Republican from Yates County, recommended expelling the three against whom individual charges had been made but he advocated reseating the other two. The other Committeemen followed different lines of development to come to the same conclusion, that the five, as individuals, had done nothing to warrant expulsion.¹⁰

After the Committee finally completed the report, little time was allowed for the Assemblymen to consider it. On March 30, Chairman Martin submitted the report and the accompanying memoranda to the legislature, and Majority Leader Adler moved that they be made "special order for consideration" on the following morning. Amos, who had earlier objected to the entire proceedings, now objected to Adler's motion. There were almost two hundred pages in the reports, he noted, and two or three days would be

10. Ibid., pp. 2717-2802.

needed to examine them properly. Speaker Sweet ruled that the motion could not be debated and was before the House for disposition. The Assemblymen accepted the motion.¹¹

The report immediately caused a degree of reaction from quite unexpected quarters. Theodore Roosevelt, Jr. informed the press, "I cannot approve of the expulsion of the entire representation of a party from the Legislature" He assured the reporters that his actions were those of an individual and that they represented no organized movement against the party leadership. More surprising than Roosevelt's defection was that of Majority Leader Adler who had been a willing party to the original plans for the proceedings and had offered the suspension resolution in the Assembly. He expressed opinions similar to Roosevelt's, and he, too, denied that there existed any organized revolt against the Assembly leadership on the question.¹²

The Assembly began to consider the Committee's report on March 31, almost three months after the five Socialists had been suspended. A large crowd gathered in the chamber that morning. Speaker Sweet ordered the galleries closed, but the floor area was crowded.¹³ The Assembly proceeded with its regular business

11. New York, Legislature, Assembly, Journal, 143d Sess., 1920, II, 1295; New York Times, March 31, 1920, p. 1.

12. Ibid.

13. Waldman, Albany . . . , pp. 220-221.

for some time before Majority Leader Adler "moved a call of the members of the House." Even then, there was some delay before the Speaker announced the special order, and Adler offered a resolution to guide the procedure.¹⁴

The Democrats sought to delay further consideration of the report in order to save Governor Smith the embarrassment of having to decide whether or not to call a special election in the event that the five were expelled. The election law provided that such an election not be held unless the vacancy occurred before April 1.¹⁵ Maurice Bloch, a New York Democrat, attempted to have consideration postponed a day because the memoranda were not yet in the hands of the Assemblymen. As an alternative, the House agreed to have the memoranda read aloud and, at Assemblyman Rowe's insistence, the majority report also. For about thirty minutes the reading continued before the Assemblymen, growing restless, voted to dispense with it. The House then denied the request of another New York City Democrat for a day's delay, and the Speaker ruled out of order the request of a third for a two-hour recess. The latter, Martin McCue, appealed the ruling.

"This is the very thing that will bring about delay

14. New York, Legislature, Assembly, Journal, 143d Sess., 1920, II, 1352-1369.

15. New York, Consolidated Laws (1909), c. 17, sec. 292.

There is no power in hell or, heaven that can prevent us from delaying this vote for twenty-four hours, and that is going to be done."¹⁶ When McCue's motion was tabled, still another metropolitan Democrat made an effort to have the House adjourn for the day. This, too, was denied, and the House proceeded to debate the report.¹⁷

The extensive debate gave the Democrats the delay that they sought, for it consumed the afternoon, all night, and extended far into the next morning. Chairman Martin opened the debate with a two-hour speech in support of the Committee report. Committeeman Cuvillier followed him with a diatribe against the Socialists in which he declared, pointing his finger at Solomon and Waldman, "Those two men who sit there with a sneer and a smirk on their faces are just as much representatives of the Russian Soviet Government as if they were Lenin and Trotzky themselves."¹⁸ At one time, Speaker Sweet left the rostrum to make a speech from the floor calling for expulsion of the Socialists.¹⁹ Waldman recalled that over one-third of the Assemblymen took part

16. New York Times, April 1, 1920, p. 2.

17. Ibid., pp. 1-2; New York, Legislature, Assembly, Journal, 143d Sess., 1920, II, 1369-1370.

18. New York Times, April 1, 1920, p. 2.

19. Ibid., p. 3.

in the debate.²⁰ There is some disagreement about how much support the Socialists received at that time. The Times reported that two speeches were made for them; the Call mentioned one of those and six others; Waldman remembered only one. At any rate, opposition to expulsion of the Socialists was very limited on the floor of the Assembly.²¹ At 3:00 a.m. the Times noted that there was still no indication of when the debating would end and the balloting begin, and at that time, speeches and arguments had been in progress for about fourteen hours.²²

On the morning of April 1, the five Socialists were officially expelled from the Assembly. According to the legislative calendar, the date was still March 31, for the session begun that day had not terminated. The Speaker asked, "Shall the main question be now put?" The House agreed, and he continued, "The report of the judiciary committee recommends the adoption of five separate and distinct resolutions." The first one to be considered was that relating to Louis Waldman. The Clerk read as follows, "Resolved, That under the facts and circumstances of this case, Louis Waldman is disqualified to have or to hold a seat in the Assembly of the State of New York as a member thereof, and that

20. Waldman, Albany . . . , p. 224.

21. Ibid., pp. 224-229; New York Call, March 31, 1920, pp. 1-2; New York Times, April 1, 1920, p. 2.

22. Ibid., p. 1.

the seat to which he was elected be declared vacant."²³ The House expelled Waldman by a vote of 115-28. The exact same procedure was followed in ousting the other four Socialists from their seats. Except for the addition of one against the Socialists, even the vote was the same on the resolutions pertaining to Claessens and Solomon, the other two against whom charges of personal disloyalty had been made. DeWitt and Orr were expelled by votes of 104 to 40.

There was nothing in the Committee's actions or the final vote to suggest a party-line split. Two of the three Democrats on the Judiciary Committee and both of the New York City Republicans thereon were included in the group recommending that all five be seated. The third Democrat, Louis A. Cuvillier, who had, by his actions throughout the proceeding, already proved himself to be almost pathologically anti-Socialist, signed the majority report. The Call had earlier reported a rumor that Charles F. Murphy, Tammany Hall boss, had instructed all of the Democrats to vote for expulsion.²⁴ In view of the split both in the Committee and in the final voting, this rumor does not seem to have been

23. New York, Legislature, Assembly, Journal, 143d Sess., 1920, II, 1387-1388.

24. New York Call, March 2, 1920, p. 3.

based in fact. Waldman, Solomon, and Claessens each received only seventeen of the thirty-five Democratic votes in the final action; fourteen of the seventeen came from New York City. Nine of the eleven Republican votes that they received were from the city. Only three Democrats were among the dozen Assemblymen who changed their vote when it became a question of individuals rather than of party. The nine Republicans who did so included the Majority Leader and three of the four other men in his Monroe County delegation as well as three Assemblymen from New York City.²⁵

Except for the press, reaction in other quarters did not express itself so clearly. The only pertinent statement that appeared in the news columns of the New York Times expressing the opinion of an individual or of a group was that made by Ex-Governor Hughes. That gentleman informed the press that he regarded the expulsion "as a serious blow at the standards of true Americanism and nothing short of a calamity."²⁶ However, the Times declared in an editorial, "It was an American vote altogether, a patriotic and conservative vote."²⁷ In contrast, The

25. New York, Legislature, Assembly, Journal, 143d Sess., 1920, II, 1388-1392.

26. New York Times, April 2, 1920, p. 15.

27. Ibid., p. 14.

Nation and its more conservative counterpart, The Review, both ran editorials condemning the ouster.²⁸ According to an article in the Literary Digest, opinion among newspapers across the country seemed to be divided and not along party lines. For example, the Richmond News-Leader (Democratic), Chicago Tribune (Republican), and Syracuse Post-Standard (Republican) all opposed the ouster as an aid to the Socialists. On the other hand, the Memphis Commercial Appeal (Democratic), Baltimore American (Republican), and Utica Press (Independent) all favored the ouster.²⁹ Perhaps the lack of reaction, other than editorial comment, appearing in the press indicated a desire among many public leaders to have the matter forgotten as soon as possible, or perhaps it merely indicated a loss of interest in the whole affair on the part of the people.

One effect of the proceedings was the brake it had placed upon legislative action. On January 22, Chairman Martin had remarked that the regular Assembly work had been practically suspended. No committee meetings were being held, and many of the

28. "Treason to America," The Nation, CX, No. 2858 (April 10, 1920), 450; "The Expulsion of the Socialists at Albany," The Review, II, No. 48 (April 10, 1920), 348-349.

29. "Disfranchising Socialism," The Literary Digest, LXV, No. 3 (April 17, 1920), 38-39.

Assemblymen were attending the hearings.³⁰ Two weeks later, the Times had reported that the hearings had disrupted legislative action in both houses with only four bills having been passed during the entire first month of the session. None of the reform legislation had been considered by a committee in either house.³¹ On March 5, Governor Smith had accused the legislature of "stifling" the welfare bills.³² Following the expulsion proceedings on the morning of April 1, the Assembly adjourned at ten o'clock only to reconvene at two o'clock, a four-hour break following an all night session. During that session of the afternoon of April 1, the Assembly passed more than seventy bills³³ and granted the Judiciary Committee almost two extra weeks in which to consider the legislation which had been submitted to it.³⁴ The Assembly adjourned on April 24 still without having passed Governor Smith's legislative program.

The Socialists decided against pursuing their cause in the courts; rather they would seek a special election. Their Commit-

30. New York, Legislature, Assembly, Committee on the Judiciary, Proceedings . . . , I, 241.

31. New York Times, February 9, 1920, p. 13.

32. Ibid., March 6, 1920, p. 1.

33. Ibid., April 2, 1920, p. 11.

34. New York, Legislature, Assembly, Journal, 143d Sess., 1920, II, 1420.

tee of Eight, the official planning group for the defense of the five, met with the defense lawyers on Saturday, April 3, and again on the following Tuesday (April 6) to discuss a course of action. After the second meeting and with no explanation of their decision, the group announced that the Socialists would not seek redress through the courts.³⁵ Rather, they would request the Governor to call a special election, justifying it by the fact that, according to the legislative calendar, the Socialists were expelled on March 31. If this request was refused, they believed that the large number of significant bills upon which the Assembly had not acted would necessitate a special session.³⁶ When asked, the Governor denied their request on the basis of the election law and declared that a decision about the need for a special session could not be made until the regular session had adjourned.³⁷ That ended the matter for a while.

If Speaker Sweet had had any hopes of the expulsion aiding his gubernatorial aspirations, he was disappointed, although it cannot be said with any degree of certainty that that hurt his chances. On April 6, Sweet announced that he would not be a

35. Zechariah Chafee, an authority on constitutional law, notes that the courts do not claim any power to review legislative actions in regard to the qualifications of members (Freedom of Speech. [New York: Harcourt, Brace & Howe, 1920], pp. 340-341).

36. New York Times, April 7, 1920, p. 8.

37. Ibid., April 13, 1920, p. 23.

candidate for re-election to the Assembly. The Times, on that occasion, noted that as a consequence of the expulsion "men of prominence and conservatism" had assured the Speaker of their moral and financial support should he become a candidate for governor. On the other hand, there was strong opposition to his candidacy from some party leaders as well as from the party rank and file in New York City and several other industrial areas of the state.³⁸ On July 25, about a month after Sweet had announced his candidacy for the Governor's race, a news article in the Times suggested that the opposition of the Republican women, who blamed Sweet for the defeat of the women's welfare bills, would vanquish him at the forthcoming convention.³⁹ Sweet acknowledged defeat and withdrew from the race on July 28.⁴⁰ From the available evidence, it is impossible to determine what part the expulsion proceedings played in Sweet's defeat, but the fact that they failed to give his candidacy the boost it needed seems significant in itself.

Apparently, the expulsion aroused a certain amount of ire in the election districts from which came the five. A special session of the legislature did become necessary in the fall of 1920. In addition to the five vacant seats that had been created

38. Ibid., April 7, 1920, p. 2.

39. Ibid., July 25, 1920, p. 3.

40. Ibid., July 29, 1920, pp. 1-2.

by the expulsion, death had created a sixth. The Socialists determined to fill all of them. Slightly more than eleven hundred Socialists registered as new voters in the six Assembly districts that were involved; not one new Republican or Democrat registered. All five of the expelled Socialists won over fusion candidates and by larger margins than they had previously, but in the Assembly district that had not been involved in the expulsion, the Socialist candidate lost to a Democrat in a three-cornered race. The Times considered that the outcome of the election supported the Socialists' contention that many Democrats and Republicans had voted for the radicals as a protest against the Speaker's tactics in the expulsion proceedings.⁴¹ Also upholding this contention is the fact that only three Socialists were elected to the Assembly in the November elections.

After the regular session of the Assembly of 1920, the state's legislative leaders did not again support such action against the body's Socialist members, but other Assemblymen proved not so willing to let the matter drop. In the special session, the legislators, after a debate that consumed almost an entire day, again voted to expel Waldman, Claessens, and Solomon, the three individuals against whom testimony had been offered in the course of the hearings. Some of the members frankly admitted

41. Ibid., September 5, 1920, p. 3; September 17, 1920, p. 17.

that pressure from Republican leaders had determined the change in voting.⁴² In spite of this change, no Socialists held seats for the entire special session because DeWitt and Orr resigned in protest against the expulsion of Claessens, Waldman, and Solomon. Socialists were allowed to retain their seats in the Assembly both in 1921 and in 1922. In each of those years the opposition to their membership was less: in 1921, the House defeated an attempt to discharge the Judiciary Committee of consideration of expulsion resolutions which had been referred to it; in 1922, the one expulsion resolution which was aimed at a Socialist was allowed to quietly expire in that Committee.⁴³ Not again soon would the Assembly take such action against the members of a minority party.

So ended the proceedings of the Judiciary Committee in the investigation of the five Socialist Assemblymen. The Republican leaders had seen the affair through to its conclusion with enough dissent in their own ranks and enough consent from the Democrats to prevent any strong party association with the deed. Other than from the Socialists, the termination of the affair had

42. Ibid., September 22, 1920, pp. 1-2; New York, Legislature, Assembly, Journal, 143d Sess., 1920, IV, Appendix II, pp. 54-63.

43. Ibid., 1921, I, 19-21, 57-58, II, 1380-1391, 1462-1463, 1606-1607; 1922, I, 773-779, II, 944.

caused little reaction, and, with the exception of a few subsequent and relatively unimportant uprisings in the Assembly, soon appeared to be almost forgotten.

CHAPTER VII

CONCLUSIONS

Several lines of political activity converged at one point to produce the expulsion from the New York State Assembly of the Socialist members. Perhaps the most significant of those lines was the contrast in the social and political philosophies of the Old Guard Republicans and the Socialists. The wartime and postwar hysteria, aggravated locally by the just-completed investigations of the Lusk Committee, constituted the second line of activity, the line which served to ignite the situation. Two other factors which converged at this point and which cannot be ignored, although the extent of their contribution cannot be determined, were the Speaker's personal ambitions and the threat to the legislative power of the Old Guard which was posed by a program of reform legislation. This combination of circumstances--mutually antagonistic value systems, fear and hysteria, personal ambition, the desire to maintain power--all combined to create a setting in which investigators could become prosecutors and, by introducing an overwhelming amount of evidence of varying degrees

of relevance and credibility, obtain from the Assemblymen the desired pattern of voting.

Some protests were made, by interested parties, to the suddenness with which the proceedings was launched and to the "steam-roller tactics" which were used by the Speaker in quashing the opposition to the measure within the Assembly. Neither of these factors seems to have been particularly important in achieving the expulsion. The limited support which opponents of the proceedings were able to obtain among the Assemblymen subsequent to the suspension and the one-sided nature of the final vote fail to indicate any significant second thoughts on the matter. Similarly, it is difficult to prove that any steam-roller tactics were used when only a handful of Assemblymen showed any inclination to defect from the majority opinion and when this handful included the Majority Leader.

To the conservative Republicans who instigated and executed the proceedings, the affair lacked the farcical quality which many others attributed to it. The defendants' position on social questions was revolutionary to people who were devoted to laissez-faire concepts in industry, and their attitude toward the war was suspicious to people of a super-patriotic cast. Many people at that time, and apparently these conservatives were among them,

were convinced that some sort of conspiracy and imminent danger existed and that these revolutionists were behind both. When considered from that point of view, any evidence with any bearing whatsoever upon the Socialists' attitudes and activities becomes relevant. Add to this a political philosophy which embraced, in a narrow way, such ideas as those which were expressed by Conboy and Brown in the final arguments--the limited extent to which a government can go in permitting among the governed loyalties higher than itself and the right of a governing body to expel from its midst elements dangerous to the government as a whole--and the Old Guard position becomes more understandable.

From proceedings which were begun and enacted in such a setting as this and by people such as these conservatives, pronounced and immediate consequences could be forthcoming, but such was not the case in this instance. The Old Guard did succeed in expelling the Socialists from the Assembly of 1920, but their victory was brief for within six months the unseated members had returned, and the conservatives could not duplicate their action. If the Speaker had hoped to capitalize upon the ouster to further his own political ambitions, he experienced a disappointment. On the other hand, the Old Guard had retained control of the legislature, and the reform bills had not been passed. The only apparent effect that the proceedings had upon the voters occurred in that

one special election in the districts from which the five had come. Most important of all was the general lack of popular reaction. The suspension of the Socialists in January had caused a considerable commotion with statements issued by many persons and organizations, but the final expulsion in April was greeted quietly with only some editorial comment in the press.

Very probably, a part of the explanation for this apparently limited effect of the proceedings can be found in Robert K. Murray's assertion that the Albany affair was the immediate cause behind the rapid decline of the Red Scare from its peak in January of 1920.¹ The large amount of opposition to the proceedings that he notes in support of his contention actually followed the suspension rather than the expulsion. By the time the proceedings had concluded, those who would express their reactions publicly had done so. More important, perhaps, as the hysteria declined and people turned to other things, the effects of such an extreme expression of that hysteria might tend to be modified.

The irony of the entire proceedings lies in the fact that, by the actions of these people in expelling elected representatives from an elective body, these conservative legislators struck a

1. Murray, Red Scare . . . , pp. 242-244.

blow at the very institution which they sought to protect, this country's republican form of government. By insisting that loyalty was a qualification necessary to an Assemblyman, they set themselves as judges of what constituted loyalty to the state and nation. One of the basic principles of republican government is the freedom that it grants those with different ideas to seek support among the electorate and, winning that support, to have a corresponding voice in the affairs of state. This basic principle the majority of the members of the New York State Assembly of 1920 sought to deny.

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Bibliographical Note

Primary sources for such a study as this can be both voluminous and deficient at the same time, and for this study that seems to have been the case. Much was written about the Albany affair at the time that it occurred, but little of this material is of any real value to the person who is attempting to discover exactly what happened and why and how. Memoirs or published papers of those who figured in the episode are few. Any unpublished ones that they might have left have been unavailable to me; the same is true for the archives of the New York State party and for those of the county parties to which the expelled Socialists belonged, all of which might have been of great help. The papers of the Socialist Party of America are located at Duke University, but they contain nothing relevant.

The main sources for this study were the pertinent documents published by the State of New York. The Assembly issued a three-volume compilation of the proceedings which includes a verbatim transcript of the hearings, the report and memoranda

of the Committee, and the briefs filed with the Committee by the lawyers for both sides. On this I have relied heavily. Also of much value have been the Journals published by the Assembly and by the Senate. Their abbreviated nature left gaps in the story at certain points which I tried to eliminate by what I hope was a judicious use of the New York Times.

With one major exception, I used the periodical and newspaper articles primarily as indicators of reaction. This exception was the newspaper mentioned above, the New York Times, which did a reasonably extensive and fairly accurate job of reporting the hearings and proved to be an invaluable source. Of equal value for reaction and opinion was the New York Call, the Socialist daily. Considerably less trust could be placed in this newspaper's factual reporting than in that of the Times. The contemporary journals of opinion had much to say about the affair but, other than as an expression of popular reaction, were of little help.

The few volumes of memoirs and the autobiographies that were available contributed relatively little to this study. Their primary value lay in the opinions that were expressed by their authors. One of Waldman's books dealt only with the Albany affair, but it was composed generally of excerpts from the official documents connected by a very tendentious commentary.

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